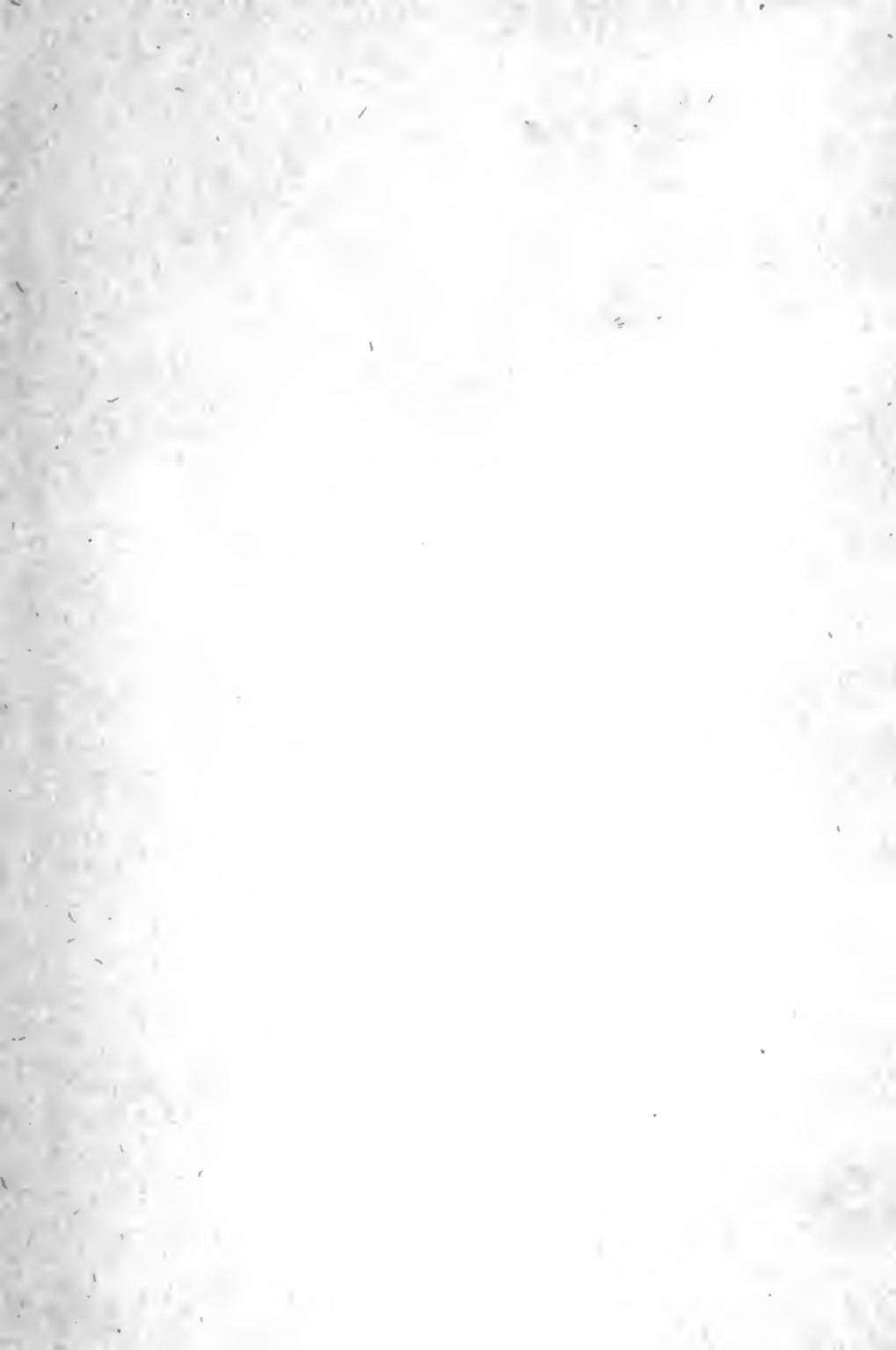






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VOLUME XIV



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# GREEN'S ENCYCLOPÆDIA

OF THE

## LAW OF SCOTLAND

EDITED BY

JOHN CHISHOLM, M.A., LL.B., K.C.

ADVOCATE, AND OF THE MIDDLE TEMPLE BARRISTER-AT-LAW

### VOLUME XIV

### SUPPLEMENTARY

*(BRINGING THE SEVERAL ARTICLES DOWN TO DATE)*

### WITH A COMPLETE INDEX

OF ALL MATTERS TREATED OF OR REFERRED TO IN THE WHOLE WORK

BY

WILLIAM GREEN, S.S.C.

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The Article on *Private Legislation Procedure* is by Mr. H. P. MACMILLAN, M.A., LL.B., Advocate; and that on *Vesting* is by Mr. J. M. IRVINE, M.A., LL.B., Advocate. The others are by the Editor.

GREEN'S ENCYCLOPÆDIA  
OF  
THE LAW OF SCOTLAND

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**Abandonment of Action** (I. 1).—In an appeal for jury trial under the Judicature Act, 1825, the appellant may abandon as if the action had been instituted in the Court of Session (*Farquhar*, 1896, 24 R. 268).

**Accidents on Railways.**—The Railway Employment (Prevention of Accidents) Act, 1900 (63 & 64 Vict. c. 27), gives power to the Board of Trade to make rules, in regard to certain specified and other subjects, with the object of reducing or removing the dangers and risks incidental to railway service (s. 1). Provision is made for the publication of the proposed rules, to which objections may be lodged (s. 2); and, if not otherwise adjusted, the objections may be referred to the Railway and Canal Commissioners (s. 3). Penalties are imposed (s. 11) for contravention of, or failure to comply with, any rule under the Act.

**Acquirenda of Bankrupt** (I. 53).—Until the trustee has completed his title to *acquirenda* in terms of sec. 103, the *acquirenda* lie open to the diligence of creditors whose debts have been incurred subsequent to the date of sequestration (*Grant*, 1901, 3 F. 1016, 9 S. L. T. No. 123).

**Actions.**—See PROCESS (XIV. *infra*).

**Actions, Vexatious.**—See VEXATIOUS ACTIONS (SCOTLAND) ACT, 1898 (XIII. 119).

**Adjournment** (I. 89).—Absence of a written record of an adjournment is a fundamental nullity which vitiates the whole proceedings (*Craig*, 1897, 24 R. (J. C.) 88, 2 Ad. 344). A conviction, where there is no record of an adjournment, is not protected from review by sec. 495 of the Burgh Police (Scotland) Act, 1892 (*ibid.*; see also *Macarthur*, 1896, 2 Ad. 151, 23 R. (J. C.) 81).

**Adjustment of Record.**—See ACTIONS (ORDINARY PROCEDURE IN), I. 77; and PROCESS (XIV. *infra*).

**Administration, Husband's Right of** (I. 118).—A wife cannot, without the consent of her husband, purchase, with her separate funds, an annuity over her own life. Such consent does not require to be in writing or proved by writing; it may be given orally, and proved by parole (*Dick*, 1900 (O. H.), 7 S. L. T. No. 430, per Lord Kincairney).

**Agency** (see I. 163, X. 13).—See PRINCIPAL AND AGENT (XIV. *infra*).

**Agricultural Holdings Acts** (I. 172).—The Act of 1900 (63 & 64 Vict. c. 50) has made several changes on the provisions of the original Act.

1. *Improvements, etc.*—The list of improvements for which the tenant is entitled to compensation has been enlarged (s. 1, and *First Schedule*). Thus, the alteration of buildings, the making and planting of osier beds, the making or improving of works for the application of water power, the removal of permanent fences, the planting of hops, the planting of orchards or fruit bushes, the protecting of young fruit trees, and the erection of wirework in hop gardens, are included in the first part of the schedule (improvements to which the consent of the landlord is required). The chalking of land, clay-burning, consumption on the holding of *corn* not produced on the holding, and consumption of such *corn* and other stuffs by horses other than those regularly employed on the holding, consumption on the holding by cattle, sheep, pigs, or such horses, of corn proved by satisfactory evidence to have been produced and consumed on the holding, and the laying down temporary pasture with clover, grass, lucerne, sainfoin, or other seeds, sown more than two years prior to the determination of the tenancy, are now included in the third part of the schedule (improvements in respect of which consent of or notice to the landlord is not required).

2. *Procedure.*—The Act simplifies the procedure by arbitration, and allows an appeal to the Sheriff and the Court of Session in the form of a stated case (s. 3). Procedure in appeals to the Court of Session is regulated by Act of Sederunt of 11th June 1901.

[Johnston, *Agricultural Holdings Acts*, 5th ed.; Connell, *Agricultural Holdings Acts*.]

*Market Gardens.*—The Market Gardeners' Compensation Act, 1897 (60 & 61 Vict. c. 22), which is to be read and construed as part of the Agricultural Holdings (Scotland) Act, 1883, puts market gardens on a special footing. Where, after 1st January 1898, it is agreed in writing that a holding shall be let or treated as a market garden, the provisions of sec. 30 of the principal Act (*i.e.* those relating to the tenant's property in fixtures, machinery, etc.) shall extend to every fixture or building affixed or erected by the tenant to or upon such holding for the purposes of his trade as a market gardener (s. 3 (1)). Sec. 37 of the Agricultural Holdings Act is to be read and construed as if the words "with the consent in writing of his landlord" were not included (s. 3 (4)). A tenant may remove all fruit trees and bushes planted by him on the holding and not "permanently set out" (*i.e.* not planted in the spot where they are intended to remain during their fruit-bearing life). If the tenant does not remove such fruit trees or

bushes before the termination of his tenancy, these remain the property of the landlord, and the tenant is not entitled to any compensation in respect of them (s. 3 (5), and see Act 1900, Sched. I. Part 3). Special provision is made for leases current at the commencement of the Act (s. 4), and as to the payment of compensation as regards Crown lands (s. 5). In the case of leases current at the commencement of the Act, the Act is not retrospective *quoad* improvements made prior to the passing of the Act (*Smith*, 1900, 2 F. 1140, 8 S. L. T. No. 115). A "market garden" is "a holding or that part of a holding which is cultivated wholly or mainly for the purpose of the trade or business of market gardening" (s. 6).

[See Johnston, *Agricultural Holdings Acts*, 5th ed., pp. 22, 62; Connell, *Agricultural Holdings Acts*, pp. 20, 94.]

The Agricultural Holdings Act, 1883, The Market Gardeners Act, 1897, and the Agricultural Holdings Act, 1900, may be cited together as the Agricultural Holdings (Scotland) Act, 1883-1900 (Act 1900, s. 14 (3)).

**Agriculture, Board of.**—See BOARD OF AGRICULTURE (XIV *infra*).

**Aliment** (I. 192).—I. *Parent and Child*.—The claim of children for support and upbringing is a debt against the estate of the father, payable in the first instance out of legitim (*Urquhart's Exr.*, 1899, 1 F. 1149; see also *Baillie's Trs.*, 1896 (O. H.), 33 S. L. R. 589, 4 S. L. T. No. 40; *Leslie*, 1899, 1 F. 601). A divorced husband remains liable for aliment of the children of the marriage (*Foxwell*, 1900, 2 F. 932). A father-in-law is not liable to aliment the deserted wife of his son (*Reid*, 1897 (O. H.), 4 S. L. T. No. 395; *Mackay*, 1903 (O. H.), 11 S. L. T. p. 299). A son-in-law not *lucratus* by his marriage is not liable to support his wife's parents (*Dear*, 1896 (O. H.), 3 S. L. T. No. 379). A young man apprenticed by his parents to a profession is entitled to reasonable aliment from them until he has learned his business (*Whyte*, 1901, 9 S. L. T. No. 85). It is no defence against an action by an illegitimate child against her deceased father's estate for aliment, that he had made an agreement with third parties for her adoption and aliment (*A. B.*, 1900, 2 F. 610). Where a mother petitioned for the custody of her illegitimate child from a person who had with her consent adopted it, the Court ordered her to pay a sum to the adopter for past aliment, but refused to make such a payment *a condition* of delivery of the child (*Kerrigan*, 1901, 4 F. 10).

II. *Husband and Wife*.—A wife's claim for aliment against the estate of her deceased husband is not precluded by her acceptance of a provision, in full of her legal rights, where such provision is inadequate for her support (*Anderson*, 1899, 1 F. 484; *Thomson*, 1898 (O. H.), 6 S. L. T. No. 336). A father-in-law is not liable to aliment the deserted wife of his son (*Reid, ut supra*; *Mackay, ut supra*). Where a wife admitted having committed adultery, the Lord Ordinary awarded her aliment against her husband, who refused to receive her into his house, but had not raised an action of divorce against her (*Milne*, 1901 (O. H.), 8 S. L. T. No. 299).

**Alimentary Interest** (I. 204).—A lady who was in right of an alimentary liferent under her father's trust settlement, conveyed to her marriage-contract trustees her whole estate for payment of the liferent to

her, and after her death to her husband. These liferents were declared to be alimentary. It was held that her conveyance did not carry her liferent under her father's settlement, and that she was entitled to demand direct payment (*Neilson's Trs.*, 1897, 24 R. 1135). Where testamentary trustees were directed to implement an obligation undertaken by the testator in an antenuptial marriage contract to pay an alimentary annuity, the trustees were held to have discharged their obligation by tendering a Government annuity for the sum named, payable to the marriage-contract trustees (*Graham's Trs.*, 1898, 1 F. 357). Trustees were directed to apply part of residue in the purchase of an annuity to a legatee for her "present support and subsistence only," it being neither assignable nor subject to the diligence of creditors, and there was no provision for a continuing trust. It was held that the legatee was entitled to payment in money of the share of residue (*Kennedy's Trs.*, 1901, 3 F. 1087). As to arrears, see *Ewing's Trs.*, 1900 (O. H.), 9 S. L. T. No. 308.

**Amendment of Record** (I. 216).—After an action for damages for breach of contract had been argued and was at *arizandum*, the pursuer was allowed to amend his record by substituting for the method of assessing damages originally proposed a statement that he had "suffered loss of profit to the amount sued for" (*Govan Rope and Sail Co.*, 1897, 24 R. 368). A pursuer may be allowed to amend a clerical error in his name in a summons (*Riach*, 1899, 1 F. 718), or in defendant's name (*Watt*, 1901 (O. H.), 9 S. L. T. No. 172). A pursuer was allowed to amend his conclusions, after the record was closed, by adding the words "or severally" after the words "jointly and severally" (*Cook*, 1900, 2 F. 1011).

**Anchors and Chain Cables Act, 1899.**—This Statute simplifies and amends the law relating to the testing and sale of anchors and chain cables. The Board of Trade have power to grant licences for the testing of anchors and chain cables (s. 5), and must appoint a fit person to be inspector of testing establishments under the Act (s. 6). It is a misdemeanour for a maker of or dealer in anchors or chain cables to sell or contract to sell, or for any person to purchase or contract to purchase, for use on any British ship, any chain cable or anchor exceeding 168 lbs. in weight, unless it has been previously proved in accordance with the Act (s. 1). Every contract for the sale of a chain cable or of an anchor exceeding said weight shall, in the absence of an express stipulation to the contrary, be deemed to imply a warranty that the anchor or cable has before delivery been proved in accordance with the Act (s. 2). The burden of proving the express stipulation and the testing and stamping lies, in case of dispute, on the seller (*ibid.*). The Act does not relieve any maker, dealer, shipowner, or other person, from any responsibility in respect of any anchor or chain cable, to which, but for the Act, he would have been subject (s. 3). A licensed tester must, with all reasonable despatch, test every anchor and chain cable that is brought to the testing establishment for the purpose of being tested; and the anchors and cables are to be tested in the order in which they are brought to the establishment, unless the persons interested agree to the contrary (s. 7). Provision is made for stamping (s. 10); as to marks and certificates of private testing (s. 15); as to the mode of testing (s. 9 and Sched. II.); as to scale of charges (s. 11); and as to penalties (ss. 13, 14).

**Ancient Monuments Protection Acts, 1882-1900.**

**1900.**—The Ancient Monuments Protection Act, 1882 (45 & 46 Vict. c. 73), constituted the Commissioners of Works the guardians of ancient monuments. The Act of 1900 (63 & 64 Vict. c. 34) gives similar powers to county councils (s. 2). Such monuments may come under the guardianship of the Commissioners in three ways: (1) The owner of any ancient monuments may, by deed under his hand, constitute the Commissioners guardians of the monument (s. 2). (2) They may, with consent of the Treasury, purchase any ancient monument—the Lands Clauses Act being incorporated with the Act 1882 for such purpose, with the exception of the provisions therein which relate to the purchase and taking of lands otherwise than by agreement (s. 3). (3) Any person may, by deed or will, give or bequeath to the Commissioners his estate or interest in any ancient monument, and the Commissioners may accept the same if they think expedient (s. 4). The Commissioners must appoint one or more inspectors of ancient monuments, to report on their condition and as to the best mode of preserving them (s. 5).

*Penalties.*—If any person injures or defaces an ancient monument to which the Acts apply, he is liable on summary conviction, at the discretion of the Court, either—(1) to forfeit any sum not exceeding £5, and, in addition thereto, to pay such sum as the Court may think just for the purpose of repairing any damage caused by him; or (2) to be imprisoned with or without hard labour for any term not exceeding one month (s. 6). The owner of an ancient monument is not so punishable in respect of any act which he may do to such monument, except in cases where the Commissioners have been constituted guardians, in which case he shall be deemed to have relinquished his rights of ownership so far as relates to any injury or defacement, and may be dealt with as if he were not the owner.

The Act 1882 (as regards Scotland), s. 21, defines *ancient monuments* to be monuments enumerated in the schedule, “and any other monument of a like character to which the Commissioners of Works at the request of the owners thereof may consent to become guardians”—and “monument” includes the site, and such portion of land adjoining as may be required to fence, cover in, or otherwise preserve the monument from injury, and also the “means of access to such monument” (s. 9).

The Act of 1900, s. 6, defines *monument* to mean “any structure, erection, or monument of historic or architectural interest, or any remains thereof.” Where the Commissioners are of opinion that the preservation of any *such* monument is a matter of public interest, they may, at the request of the owner, consent to become the guardians thereof; and the Act of 1882 shall thereupon apply to such monument (Act 1900, s. 1). The Commissioners may not, however, become the guardians of any structure which is occupied as a dwelling-place by any person other than a person employed as a caretaker thereof, and his family.

*County Councils.*—The Act of 1900 confers similar, but less wide, powers on county councils. A county council, if they think fit, *may purchase* by agreement any monument (as defined in the Act of 1900, see *supra*) situate in their county, or in any adjacent county; and they may, at the request of the owner, consent to *become the guardians* of any such monument; and may *undertake or contribute towards* the cost of preserving, maintaining, and managing any such monument, whether they have purchased the same, or have become the guardians thereof or not (s. 3 (1)). The incorporation of the Lands Clauses Acts (see *supra*) is to have effect in relation to a county council and any monument under the Act of 1900. So also do

the penalties provided in the Act of 1882 (Act 1900, s. 3 (2)). The county council or the Commissioners of Works may receive *voluntary contributions* towards the cost of maintenance and preservation of any monument of which they may become the guardians or purchasers under the Acts; and they may enter into *agreements* with the owner or others as to the maintenance and preservation, and the cost thereof (Act 1900, s. 3). The Commissioners of Works and the county council may, in respect of any monument in the county or in any adjacent county of which they are the owners or guardians (but, where they are only guardians, then with consent of the owners), enter into and carry into effect any agreements for the *transfer* from the Commissioners to the county council, or *vice versa*, of such monument, or of any estate or interest therein, or of the guardianship thereof (*ibid.* s. 4).

*Access.*—The public have a right of access to any monument of which the Commissioners of Works or any county council are the owners or guardians, but where they are guardians only with consent of the owner, at such times and under such regulations as the Commissioners or county council prescribe (Act 1900, s. 5).

**Animals.**—See DISEASES OF ANIMALS ACT, 1903 (XIV. *infra*).

**Annuities.**—See ALIMENTARY INTEREST (XIV. *supra*).

### **Appeal to Court of Session from Sheriff Court.**

—(a) *Appeals for Review.*—If a petition has been incompetently presented in the Sheriff Court, and dismissed by the Sheriff on the ground of no jurisdiction, the Court, on appeal, will not adopt the petition and treat it as if it had originated in the Court of Session (*Gillan*, 1898, 1 F. 183). An order made by a Sheriff on an application for caption is not an interlocutor in the *lis* between the parties, and will not be reviewed by the Court on appeal (*Broatch*, 1898, 1 F. 303). It is incompetent to appeal against the deliverance of a Sheriff refusing his sanction to a deed of arrangement (*Coutts & Co.*, 1900, 2 F. 1066). In a question of competency in appeals in a *cessio*, the value of the cause must be measured by the amount of the claim contained in the initial writ (*e.g.*, in the affidavit of claim), and not by the value determined as a result of the judgment brought under review (*Henderson*, 1896, 23 R. 659). In a case stated in terms of the Friendly Societies Act, 1875, s. 22 (d) (e), it is competent to appeal a small debt action arising out of a dispute between a society and one of its members, although the sum at issue is less than £25 (*Linton*, 1895, 23 R. 51). (See also as to value of cause, *M'Kimmie's Trs.*, 1899, 2 F. 156; *Broatch, ut supra*; *Standard Ship-owners' Mutual Association*, 1896, 23 R. 870.) It is competent to appeal against a Sheriff's judgment disposing only of a question of expenses (*Grego*, 1901, 3 F. 450).

*Civil or Criminal.*—In a complaint against a corporation under the Summary Jurisdiction Acts, 1864 and 1881, and the Criminal Procedure Act, 1887, the jurisdiction is civil, and an appeal by stated case lies to the Court of Session, and not to the High Court of Justiciary (*Simpson*, 1902, 4 F. 611; *N. B. Ryv.*, 1900, 3 Ad. 121, 2 F. (J. C.) 28; *Lindsay*, 1902 (4 F. (J. C.) 46).

(b) *Appeals for Removal of Process* (I. 262).—The Court refused to

remit to the Sheriff an action for damages for personal injury, originating in the Sheriff Court and appealed to the Court of Session for jury trial (*Jamieson*, 1898, 25 R. 551). An action for accounting was so remitted (*Tosh*, 1896, 24 R. 54); and a case appealed for jury trial was sent back to the Sheriff for proof where the Court were of opinion that it was unsuited for trial by jury (*Maclean*, 1898, 6 S. L. T. No. 227). Where neither party in an appeal for jury trial claims trial by jury, the Court will, if the relevancy be sustained, remit to the Sheriff to proceed with the proof (*Fife*, 1895, 23 R. 8). (As to preliminary proof, see *McCafferty*, 1898, 25 R. 872; and *Annan*, 1898, 1 F. 326.)

**Appeal to High Court of Justiciary** (I. 264).—Proceedings taken for punishment, by way of fine, of an incorporated society (which cannot be imprisoned) are civil, and an appeal to the High Court is incompetent (*Summary Procedure Act*, 1864, s. 28; *N. B. Ry. Co.*, 1900, 3 A. 121, 2 F. (J. C.), 28; see also *Lindsay*, 1902, 4 F. (J. C.) 46; *Simpson*, 1902, 4 F. 611).

**Appeal to House of Lords** (I. 266).—There is no appeal to the House of Lords from the judgment of the Court of Session upon a case stated by the Sheriff under the Workmen's Compensation Act, 1897 (*M'Kinnon*, 1901, 3 F. (H. L.) 1).

**Appointment, Power of.**—A power to apportion among heirs does not involve the power to restrict the interest of one of them to a life-tenant, although the restriction be coupled with a power of disposal *mortis causa* of the apportioned share (*Warrand's Trs.*, 1901, 3 F. 369).

**Arbiter; Arbitration** (I. 294; I. 297).—A clause in a contract provided that any dispute arising should be referred to arbitration "in the customary manner of the timber trade." This was held to be a valid arbitration clause, under sec. 1 of the Arbitration (Scotland) Act, 1894; and the Court was prepared, in the exercise of its discretion, to appoint an arbiter under secs. 2 and 3 (*Douglas & Co.*, 1899, 2 F. 575).

Where a proposed arbiter had promised the party naming him that he would do the best for him he could, he was held to be thereby disqualified (*Pekholtry*, 1899 (O. H.), 7 S. L. T. No. 156); see also *Caledonian Ry. Co.*, 1897, 25 R. 74). So also, where an arbiter named in a contract privately tells one of the parties that he is in the right in a dispute under the contract, he is disqualified from acting as arbiter (*McLauchlan & Brown*, 1900, 8 S. L. T. No. 226). But a man may appoint himself arbiter under a contract between himself and another (*Buehan*, 1902, 4 F. 620). An arbiter, apart from special agreement, has a claim for remuneration, under sec. 32 of the Lands Clauses Act, 1845 (*Murray*, 1900, 2 F. 460).

Where a contract contains an arbitration clause in general terms, binding the parties to refer all questions with regard to the construction and meaning of the contract, and one of the parties resorts to a Court of law for the enforcement of the clause against the other, it is not enough for the pursuer to table the general proposition that a dispute has arisen, and to demand that it be straightway submitted to arbitration. He must

state what the question is, and the Court must construe the contract to the extent of determining whether the question so defined falls within the arbitration clause or not (*Steuart*, 1898 (O. H.), 6 S. L. T. No. 93; *Mackay*, 20 R. 1093; *Pearson*, 21 D. 419; *Mingle*, 10 M. 901). A reference clause in a contract can operate only between the parties to the contract; and where one of the parties named in a contract denies that he was ever bound by it, the question raised is one for the Court to decide, and not for the arbiter (*Ransohoff & Wissler*, 1897, 25 R. 284). Although the rules of a society provide that, in disputes between it and its members, recourse shall not be had to the civil Courts, the jurisdiction of the Courts is not excluded where the society has acted *ultra vires* (*Skerret*, 1896, 23 R. 468; cf. *Rombach*, 1896 (O. H.), 4 S. L. T. 264). Where there are several questions in dispute, involving payment of money, an arbiter may award a gross sum, without dealing separately with the questions submitted (*Paterson & Son*, 1900, 3 F. (H. L.) 34). In a submission it was provided that an arbiter should issue his award by a certain date. He did not issue the award until a year later. The Court held that the time fixed was of the essence of the contract, and that the award was invalid (*Macgillivray*, 1900 (O. H.), 8 S. L. T. No. 186).

[Irons and Melville, *Law of Arbitration in Scotland*; Wood and Macphail, *Law of Arbitration in Scotland*.]

**Arrestment and Furthcoming** (I. 310).—*Execution*.—An arrestment in the hands of a corporation is well executed by the delivery of a copy to a servant of the corporation at its proper place of business—in the case of a city corporation, at the city chambers (*Glasgow Corporation*, 1898, 25 R. 690). But where an Act of Parliament provides that certain commissioners shall be a body corporate, “and shall have power to sue and be sued in that name alone,” arrestments used in the hands of the clerk to the commissioners are invalid (*Gall*, 1901 (O. H.), 9 S. L. T. No. 107).

*Competition*.—Although an arrester using arrestments subsequent to a previous arrestment *ad jurisdictionem fundandum* may not defeat the purpose of that arrestment by enforcing furthcoming of the fund arrested before citation has followed on that arrestment, yet citation having followed, the arrestment to found jurisdiction having served its purpose, flies off, and the rights of the parties to the fund fall to be determined according to the ordinary rules of priority (*Stillie's Trs.*, 1898 (O. H.), 6 S. L. T. No. 222; see also *Harvey's Yoker Distillery*, 1901 (O. H.), 8 S. L. T. No. 294).

**Arrestment Jurisdictionis Fundandæ Causâ** (I. 321).—Arrestments do not confer on the Courts jurisdiction to entertain declaratory conclusions (*Williams*, 1897 (O. H.), 5 S. L. T. No. 275); but jurisdiction founded by arrestment extends to the pronouncing of decrees *ad factum præstandum* (*Powell*, 1900 (O. H.), 8 S. L. T. No. 152).

There is no fixed time within which an arrestment to found jurisdiction must be followed by a summons (*Craig*, 1896, 23 R. 500).

See also ARRESTMENT AND FURTHCOMING, *Competition*, *supra*.

**Artizans' Dwellings.** — See HOUSING OF THE WORKING CLASSES (XIV. *infra*).

**Assessment.**—See RATING (XIV. *infra*).

**Assessor of Railways and Canals** (I. 331).—By 60 & 61 Vict. c. 12, provision is made for superannuation allowances (to be fixed by the Secretary for Scotland) to the assessor of railways and canals, and to the clerks and other officers whom he may be allowed to employ permanently in the execution of his duties under the Lands Valuation (Scotland) Act, 1854. The conditions are set forth in the Act.

**Auction or Roup** (I. 349).—An association of butchers induced cattle salesmen, who were accustomed to sell their cattle at a certain cattle market, to refuse to sell to co-operative stores. The salesmen enjoyed no monopoly of sale at the cattle market in question. It was held that the salesmen were entitled to refuse to accept bids from co-operative stores (*Scottish Co-operative Wholesale Society Limited*, 1898 (O. H.), 5 S. L. T. No. 336). Five out of six owners of a ship exposed it for sale by auction on the warrant of a decree of set and sale. There was no clause in the articles of roup entitling them to bid. It was held that a purchase by them fell to be reduced at the instance of the sixth owner (*Morrice*, 1902, 39 S. L. R. 409).

**Bailie** (I. 377).—See TOWN COUNCILS ACTS (XIV. *infra*).

**Bank** (I. 379).—If a bank, with funds at a customer's credit, dishonour that customer's cheque, it is liable to him for the damage done to his financial reputation (*King*, 1899, 1 F. 928).

**Bankruptcy** (II. 1).—See also CESSIO BONORUM; and SEQUESTRATION (XIV. *infra*).

*Notour Bankruptcy* (see II. 3).—The modes of constituting notour bankruptcy introduced by sec. 6 of the Debtors (Scotland) Act, 1880, apply only to cases in which imprisonment is rendered incompetent by that Act, and do not apply, therefore, to companies, which *sua natura* could not be imprisoned (*Hodge*, 1900, 2 F. 983).

*Endurance of Notour Bankruptcy* (II. 6).—Notour bankruptcy does not cease by reason of the debtor having made an arrangement with his creditors for payment of their claims by instalments over an extended period of time (*Galbraith, Niell's Tr.*, 1898 (O. H.), 36 S. L. R. 139).

*Preferences* (II. 9).—A payment by an endorsed cheque is struck at as illegal by the Act 1696, c. 5 (*Anderson's Trs.*, 1899, 1 F. 90). Where a bankrupt, who has obtained the consent of his creditors to a composition contract, assigns valuable rights to a particular creditor in return for money wherewith to pay the composition, this is not a *pactum illicitum* (*Key*, 1899, 2 F. 302). A creditor of an insolvent debtor may sue an action of declarator that a particular transaction between the debtor and another creditor constitutes an illegal preference (*M'Laren's Trs.*, 1897, 24 R. 920; see also *Cook*, 1896, 23 R. 925). (See also as to illegal preferences, *Commercial Bank*, 1901 (O. H.), 9 S. L. T. No. 138; *Hill's Trs.*, 1901 (O. H.), 9 S. L. T. No. 387; *Craig's Trs.*, 1902, 4 F. 1132; *Browne's Trs.*, 1902 (O. H.), 10 S. L. T. 57.)

**Bill of Exceptions** (II. 72).—When the judge presiding at a jury trial is asked to give a direction and refuses, it is not enough, on a bill of exceptions, to show that the proposed direction correctly formulated a legal proposition; it must also be made clear that such a direction was necessary to guide the jury to a right verdict (*Wood*, 1899, 2 F. 1).

**Bill of Exchange** (I. 75).—*Parties.*—Promissory notes signed by a married woman cannot be enforced against her unless exceptional grounds of liability be shown (*Davis*, 1898 (O. H.), 6 S. L. T. No. 132; see also *Gibson*, 1900 (O. H.), 7 S. L. T. No. 385; *Juck*, 1900 (O. H.), 8 S. L. T. No. 2).

*Consideration.*—As to extortion, see *Young*, 1896, 23 R. 419.

*Proof.*—Where two or more persons accept a bill, it is competent to prove by parole their rights *inter se* (*Crosbie*, 1900, 3 F. 83).

In an action on a bill of exchange the bill must be libelled in the summons (*Davis*, 1897, 24 R. 297); see also *Bank of Scotland*, 1898, 1 F. 96; *Sanderson*, 1898 (O. H.), 5 S. L. T. No. 478).

*Prescription.*—Prescription of a bill is interrupted by the service of an action laid upon the bill, although the summons was defective in respect that it did not libel the bill (leave to amend being granted). (*Bank of Scotland*, 1898, 1 F. 96.)

**Birds, Protection of Wild** (II. 139).—When any person is convicted of an offence against the Wild Birds Protection Acts, 1880 to 1896, the Court may, in addition to any penalty which may be imposed, order any wild bird, or wild bird's egg, in respect of which the offence has been committed, to be forfeited and disposed of as the Court may think fit (Wild Birds Protection Act, 1902, 2 Edw. VII. c. 6, s. 1).

**Board of Agriculture and Fisheries.**—A Board of Agriculture for Great Britain was established by 52 & 53 Vict. c. 30. The Board consists of the Lord President of the Council, the Principal Secretaries of State, the First Commissioner of the Treasury, the Chancellor of the Exchequer, the Chancellor of the Duchy of Lancaster, the Secretary for Scotland, and such other persons as the Sovereign may appoint, with a President of the Board to be appointed from the Privy Council. Amongst the powers transferred to the Board were the powers of the Privy Council under the Destructive Insects Act, 1877, and the Contagious Diseases (Animals) Acts, 1878, 1884, 1886 (s. 2 and Sched.); and powers as to the muzzling, etc., of dogs are conferred on the Board (s. 3).

By 3 Edw. VII. c. 31, the Board is hereafter to be styled the Board of Agriculture and Fisheries, and the powers and duties of the Board of Trade under the Fisheries Acts (specified in the Act), or under any local and personal Act which relates solely to the industry of fishing, are transferred to the Board. See **FISHINGS** (XIV. *infra*).

**Burgh** (II. 258).—See **POLICE** (XIV. *infra*); **TOWN COUNCILS ACTS**, 1900, 1903 (XIV. *infra*). See also **DRAINAGE** (IV. 357); **PUBLIC HEALTH, Drainage, etc.** (X. 103). The Burgh Sewerage, Drainage, and Water Supply (Scotland) Act, 1901 (1 Edw. VII. c. 24), contains important pro-

visions as to money borrowed for sewers, etc., and as to the transference of special districts.

SECURITY FOR SUMS BORROWED FOR SEWERS, ETC.—Where sums of money have been borrowed or are owing by the town council or commissioners of a burgh under any Act for purposes of sewerage and draining or water supply, the town council as the authority under the Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), as amended by the Town Councils (Scotland) Act, 1900 (63 & 64 Vict. c. 49), are to provide the sums necessary for repaying the principal and paying the interest of such sums out of the assessments after mentioned. The sums constitute a charge on the said assessments, and the creditors have all the powers, rights, and remedies at the passing of the Act exercisable by a lender of money on the security of the assessments originally assigned to them, the said assessments after mentioned being deemed to be assigned to such creditors in security of their debt (s. 1).

SEWER AND WATER ASSESSMENTS.—In any burgh, or in any special or separate drainage district formed therein under any Act, the expense incurred either before or after the passing of this Act for sewerage and drainage or water supply, as the case may be, within the same, or for the purposes thereof, and the sums necessary for repayment of any money borrowed therefor either before or after the passing of this Act, together with the interest thereof, are to be paid out of a sewer assessment or water assessment, as the case may be, which the town council of the burgh are to raise and levy on and within such burgh, or (in the case of the sewer assessment) within such special or separate district, in the same manner, and with the same remedies and modes of recovery and incidents, as are provided for the public health general assessment therein. But where a special or separate drainage district has been formed under the provisions of any Act, and drainage works have been executed and are maintained therein, the lands and heritages situated within such special or separate district are not liable to assessment for the expense of sewerage and drainage works in other parts of the burgh. For shops the water assessment is chargeable only on one-fourth of the rental of the premises, unless in special circumstances the town council see cause to charge the ordinary rates, and in that case it is lawful for any person who may think himself aggrieved to apply to the Sheriff in the manner provided in the Burgh Police Act, 1892. “The sewer assessment and the water assessment together shall not in any burgh or special or separate drainage district exceed the rate of four shillings in the pound: Provided that if the produce of a rate of four shillings in the pound in any burgh or special or separate drainage district shall not be sufficient to meet the expenditure (including the annual charge for interest and repayment of debt) *bona fide* incurred or contemplated within such burgh or special or separate district, it shall be lawful to increase such rate to such extent as may have been approved of by the Local Government Board for Scotland.” A rate cannot be imposed in respect of the expenditure within any special or separate drainage district upon any premises without such district.

TRANSFERENCE OF SPECIAL DISTRICTS.—“All special or separate drainage districts that may have been formed in any burgh under any Public Health Act shall, subject to the provisions of this Act, be deemed to be drainage districts under the Burgh Police Act, 1892, and any special or separate water supply districts which have been so formed shall cease to exist as such, and shall be united to the other parts of the burgh for the purposes of water supply, and all rights and liabilities connected therewith:

Provided that nothing herein contained shall affect any special water supply district partly within a county and partly within a burgh, or the provisions relating thereto of sec. 81 of the Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50), as amended by sec. 44 of the Local Government (Scotland) Act, 1894 (56 & 57 Vict. c. 73)."

**AMENDMENT OF 55 & 56 VICT. C. 55.**—(1) Sec. 233 and sec. 236 of the Burgh Police Act shall be read as if the sewer assessment before mentioned were substituted for the sewer rates therein mentioned. (2) Sec. 264 of the principal Act shall be read as though for the words "portion of the burgh general assessment applicable to the water supply" the words "water assessment" were substituted. (3) Sec. 347 of the principal Act shall be read as though for the words "burgh general assessment so far as it is applicable to water" the words "water assessment" were substituted. (4) Sec. 363 of the principal Act shall be read and have effect as if for the words "said assessments" the words "sewer assessments" were substituted. (5) Notwithstanding anything contained in sec. 269 of the principal Act, the provisions of that Act with respect to supply of water shall apply in the case of any burgh which is supplied with water by the town council thereof under the powers of any local Act or Acts.

**TOWN COUNCIL, ETC., TO HAVE POWERS OF 60 & 61 VICT. C. 38.**—The powers and duties of the town council of any burgh, as the authority under the principal Act, with reference to sewerage and drainage or water supply, shall extend to the whole area of the burgh as existing for the purposes of the Public Health (Scotland) Act, 1897, and the town council of any burgh, as the authority under the principal Act, in addition to the powers conferred upon them by the principal Act, or any other Act, shall, with reference to sewerage and drainage or water supply within such area, have the same rights, powers, and privileges as are conferred by the Public Health (Scotland) Act, 1897, upon local authorities under the Act in districts other than burghs, with the exception of the rights, powers, and privileges conferred by secs. 122 and 131 of the last-mentioned Act, to which sections the present section shall not apply, and in so far as necessary for giving effect to this enactment the last-mentioned Act and the Acts and parts of Acts incorporated therewith are, subject to the necessary modifications, incorporated with the principal Act: Provided that all costs and charges incurred by the town council in the exercise of such rights, powers, and privileges shall be provided for out of the sewer assessment or water assessment before mentioned, as the case may be, and that where it shall be necessary for the town council to borrow money for the purposes of sewerage and drainage or water supply, they shall be entitled to do so on the security of the sewer assessment or water assessment hereinbefore mentioned in lieu of the assessments mentioned in the principal Act, or the Public Health (Scotland) Act, 1897, as the case may be.

The above provisions do not apply to any burgh to which the Burgh Police Act, 1892, does not apply, or to any burgh in which at the passing of the Act a local Act (including an Act confirming a provisional order) is in force with respect to sewerage, drainage, or water supply. But the town council of any burgh to which these provisions do not apply, may by resolution adopt them; and they shall in that case come into force in the burgh after the date specified in the resolution. Where such a resolution is passed, the Acts specified in the schedule to the Act, in so far as they apply to the burgh in question, are to be deemed to be repealed to the extent specified; and all local Acts (including as aforesaid) which apply exclusively to the burgh, so far as inconsistent with or dealing with the

same matters as the above provisions of the Act, are also to be repealed, and must be specified in the resolution. Every such resolution must be forthwith communicated to the Secretary for Scotland (s. 8).

AMENDMENT OF 60 & 61 VICT. c. 38.—(1) Sec. 147 of the Public Health (Scotland) Act, 1897, shall be read as though the words “or in the Burgh Police (Scotland) Act, 1892,” were inserted after the word “herein.” (2) Sec. 261 of the Burgh Police Act, 1892, shall be read as if for the words “for other purposes” the words “for these purposes” were substituted (s. 6).

The Acts specified in the schedule are repealed to the extent mentioned in so far as these apply to burghs to which the Act applies from its commencement; viz. (1) Burgh Police (Scotland) Act, 1892; sec. 227, from the words “and the commissioners” to the end of the section; sec. 232; sec. 340, from “a rate equal to four shillings” to “otherwise at”; secs. 361, 362, 364. (2) Public Health (Scotland) Act, 1897, secs, 101, 113, 133, 134, 137. See DRAINAGE (IV. 357); PUBLIC HEALTH, *Drainage* (X. 103).

### **Burgh Police (Scotland) Act, 1903.**—See POLICE (XIV. *infra*).

**Cables (Chain).**—See ANCHORS AND CHAIN CABLES ACT, 1899 (XIV. *supra*).

**Cessio Bonorum** (II. 357).—An application by a creditor to have his bankrupt debtor ordained to execute a disposition *omnium bonorum* is an application for an order *ad factum præstandum*, and may be appealed, although the claim of the petitioning creditor is less in amount than £25 (*Broatch*, 1898, 1 F. 303).

**Charitable Trust** (II. 393).—Where the purposes of a charitable trust had failed, the Court granted authority to the trustees to pay part of the trust funds to officials and servants (*Falkirk Schools*, 1899, 1 F. 1175). Subscriptions to a charitable trust cannot be recovered if the objects of the trust fail and it comes to be wound up (*ibid.*; see also *Shaw Stewart*, 1899, 7 S. L. T. No. 127; 36 S. L. R. 924). For example of what is not a charitable trust, but rather of the nature of a friendly society, see *Smith* (1899, 1 F. 741, 6 S. L. T. No. 458). The Court have refused to sanction the extension of a scheme providing a bursary for young men so as to include young women (*Dallas*, 1903, 11 S. L. T. p. 245).

**Children, Employment of.**—The Mines (Prohibition of Child Labour Underground) Act, 1900 (63 & 64 Vict. c. 21), prohibits the employment of any boy under *thirteen* in any mine below ground. This alters secs. 4 and 5 of the Coal Mines Regulation Act, 1887, and sec. 4 of the Metalliferous Mines Regulation Act, 1872, by increasing the age from twelve to thirteen.

The Employment of Children Act, 1903 (3 Edw. vii. c. 45), which came into operation on 1st January 1904, makes important regulations regarding the employment of children.

**POWER TO MAKE BYELAWS FOR REGULATING THE EMPLOYMENT OF CHILDREN.**—Any local authority may make byelaws—(i.) prescribing for all children, or for boys and girls separately, and with respect to all occupations, or to any specified occupation,—(a) the age below which employment is illegal; and (b) the hours between which employment is illegal; and (c) the number of daily and weekly hours beyond which employment is illegal: (ii.) prohibiting absolutely or permitting, subject to conditions, the employment of children in any specified occupation (s. 1).

**POWER TO MAKE BYELAWS FOR THE REGULATION OF STREET TRADING BY PERSON UNDER SIXTEEN.**—Any local authority may make byelaws with respect to street trading by persons under the age of sixteen, and may by such byelaws—(a) prohibit such street trading, except subject to such conditions as to age, sex, or otherwise, as may be specified in the byelaw, or subject to the holding of a licence to trade to be granted by the local authority; (b) regulate the conditions on which such licences may be granted, suspended, and revoked; (c) determine the days and hours during which, and the places at which, such street trading may be carried on; (d) require such street traders to wear badges; (e) regulate generally the conduct of such traders: Provided as follows:—(1) The grant of a licence or the right to trade shall not be made subject to any conditions having reference to the poverty or general bad character of the person applying for a licence or claiming to trade; (2) the local authority, in making byelaws under this section, shall have special regard to the desirability of preventing the employment of girls under sixteen in streets or public places (s. 2).

**GENERAL RESTRICTIONS ON EMPLOYMENT OF CHILDREN.**—(1) A child shall not be employed between the hours of nine in the evening and six in the morning: Provided that any local authority may, by byelaw, vary these hours either generally or for any specified occupation.

(2) A child under the age of eleven years shall not be employed in street trading.

(3) No child who is employed half-time under the Factory and Workshop Act, 1901, shall be employed in any other occupation.

(4) A child shall not be employed to lift, carry, or move anything so heavy as to be likely to cause injury to the child.

(5) A child shall not be employed in any occupation likely to be injurious to his life, limb, health, or education, regard being had to his physical condition.

(6) If the local authority send to the employer of any child a certificate signed by a registered medical practitioner that the lifting, carrying, or moving of any specified weight is likely to cause injury to the child, or that any specified occupation is likely to be injurious to the life, limb, health, or education of the child, the certificate shall be admissible as evidence in any subsequent proceedings against the employer in respect of the employment of the child (s. 3).

A byelaw made under the Act is not to have any effect until confirmed by the Secretary for Scotland, and is not to be so confirmed until at least thirty days after the local authority have published it in such manner as the Secretary for Scotland may by general or special order direct. The Secretary for Scotland is, before confirming any byelaw, to consider any objections to it which may be addressed to him by persons affected or likely to be affected thereby; and may, before confirming any byelaw, order that a local inquiry be held with respect to the byelaw or with respect to any objections thereto. Byelaws made under the Act may apply either to the whole of the area of the local authority, or to any specified part thereof.

Byelaws made by a county council are not of any force or effect within any burgh or urban district the council of which is constituted a local authority under the Act. Byelaws under the Prevention of Cruelty to Children Act, 1894, are to be made by the same authority and confirmed in the same way as byelaws under this Act (s. 4).

OFFENCES AND PENALTIES.—“(1) If any person employs a child or other person under the age of sixteen in contravention of this Act, or of any byelaw under this Act, he shall be liable on summary conviction to a fine not exceeding forty shillings, or, in case of a second or subsequent offence, not exceeding five pounds.

“(2) If any parent or guardian of a child or other person under the age of sixteen has conduced to the commission of the alleged offence by wilful default, or by habitually neglecting to exercise due care, he shall be liable on summary conviction to the like fine.

“(3) If any person under the age of sixteen contravenes the provisions of any byelaw as to street trading made under this Act, he shall be liable on summary conviction to a fine not exceeding twenty shillings, and in case of a second or subsequent offence, if a child, to be sent to an industrial school, and, if not a child, to a fine not exceeding five pounds.

“(4) In lieu of ordering a child to be sent under this section to an industrial school, a Court of summary jurisdiction may order the child to be taken out of the charge or control of the person who actually has the charge or control of the child, and to be committed to the charge and control of some fit person who is willing to undertake the same until such child reaches the age of sixteen years: And the provisions of secs. 7 and 8 of the Prevention of Cruelty to Children Act, 1894, shall, with the necessary modifications, apply to any order for the disposal of a child made under this subsection” (s. 5).

OFFENCES BY AGENTS OR WORKMEN AND BY PARENTS.—“(1) Where the offence of taking a child into employment in contravention of this Act is in fact committed by an agent or workman of the employer, such agent or workman shall be liable to a penalty as if he were the employer.

“(2) Where a child is taken into employment in contravention of this Act on the production, by or with the privity of the parent, of a false or forged certificate, or on the false representation of his parent that the child is of an age at which such employment is not in contravention of this Act, that parent shall be liable to a penalty not exceeding forty shillings.

“(3) Where an employer is charged with any offence under this Act, he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the Court is satisfied that the employer had used due diligence to comply with the provisions of the Act, and that the other person had committed the offence in question without the employer's knowledge, consent, or connivance, the other person shall be summarily convicted of the offence, and the employer shall be exempt from any fine.

“(4) When it is made to appear to the satisfaction of an inspector or other officer charged with the enforcement of this Act, at the time of discovering the offence, that the employer had used all due diligence to enforce compliance with this Act, and also by what person the offence had been committed, and also that it had been committed without the knowledge, consent, or connivance of the employer, and in contravention of his order, then the inspector or officer shall proceed against the person whom

he believes to be the actual offender in the first instance without first proceeding against the employer" (s. 6).

**LIMITATION OF TIME.**—With respect to summary proceedings for offences and fines under this Act, and any byelaws made thereunder, the information must be laid within three months after the commission of the offence.

**POWER OF OFFICER OF LOCAL AUTHORITY TO ENTER PLACE OF EMPLOYMENT.**—If it appear to any justice of the peace, on the complaint of an officer of the local authority acting under this Act, that there is reasonable cause to believe that a child is employed in contravention of this Act in any place, whether a building or not, such justice may by order under his hand empower an officer of the local authority to enter such place at any reasonable time, within forty-eight hours from the date of the order, and examine such place and any person therein touching the employment of any child therein. Any person refusing admission to an officer authorised by an order under this section, or obstructing him in the discharge of his duty, shall for each offence be liable on summary conviction to a penalty not exceeding twenty pounds (s. 8).

**EMPLOYMENT IN FACTORIES.**—Byelaws made under the Act do not apply to any child above twelve employed in pursuance of the Factory and Workshop Act, 1901, or the Metalliferous Mines Regulation Act, 1872, or the Coal Mines Regulation Act, 1887, so far as regards that employment; and in the application of sec. 3 to children employed under those Acts, the inspectors appointed under those Acts are substituted for the local authority in respect of such employment (s. 9).

**SAVING FOR INDUSTRIAL AND OTHER SCHOOLS.**—Nothing in this Act or in any byelaw made thereunder is to apply to the exercise of manual labour by any child under order of detention in a certified industrial or reformatory school, or by any child while receiving instruction in manual labour in any school (s. 10).

Sec. 3 of the Prevention of Cruelty to Children Act, 1894 (which regulates the employment of children in public entertainments), is to have effect as if re-enacted in the Act: Provided—(1) A licence under that section shall not be granted to any child under the age of ten years; and (2) any inspector or other officer charged with the execution of this Act shall have and may exercise all the powers of an inspector of factories and workshops under that section, and that section shall apply accordingly (s. 11).

**DEFINITIONS.**—In the Act—The expression "child" means a person under the age of fourteen years: The expression "guardian," used in reference to a child, includes any person who is liable to maintain or has the actual custody of the child: The expressions "employ" and "employment," used in reference to a child, include employment in any labour exercised by way of trade or for the purposes of gain, whether the gain be to the child or to any other person: The expression "street trading" includes the hawking of newspapers, matches, flowers, and other articles, playing, singing, or performing for profit, shoe-blacking, and any other like occupation carried on in streets or public places (s. 13).

**APPLICATION TO SCOTLAND.**—In the application of the Act to Scotland—"The Sheriff or Sheriff-substitute" shall be substituted for "a Court of summary jurisdiction": Any fine or penalty under this Act shall be recoverable by imprisonment in terms of the Summary Jurisdiction Acts: The expression "local authority," in secs. 1 and 3 of the Act, shall mean the school board; and in sec. 2 of this Act shall mean, in the case of a royal, parliamentary, or police burgh having, within its boundary for police purposes, according to the census of nineteen hundred and one, a population

of or exceeding seven thousand, and in the case of the burgh of Coatbridge, the town council, and elsewhere the county council, and for the purposes of sec. 2 every burgh other than those hereinbefore specified shall be held to form part of the county within which it is situated: Provided that in sec. 8 of the Local Government (Scotland) Act, 1889, the expression "purposes hereinafter mentioned" shall be deemed to include the purposes of this Act: Nothing in the Act shall affect the power of the school board to grant exemptions in certain employments as provided by subsec. 3 of sec. 7 of the Education (Scotland) Act, 1878, and the expression "this Act" in the said section shall be deemed to include the Employment of Children Act, 1903: A byelaw shall not be made by a council under the Act until the expiry of a period of one month after such byelaw as proposed to be made has been communicated to the clerk to each school board of a parish, burgh, or district comprised or partly comprised within the area of such council for the purposes of this Act, and such council shall give due consideration to any observations received from any such school board within such period; and nothing in the Act shall make it lawful for any child to be employed in contravention of sec. 6 of the Education (Scotland) Act, 1878, or sec. 2 of the Education (Scotland) Act, 1901: Sec. 276 of the Burgh Police (Scotland) Act, 1892, is repealed (s. 14).

**EXPENSES OF ACT IN SCOTLAND.**—Any expenses incurred by a local authority in Scotland in carrying into effect the provisions of this Act or any byelaws made thereunder shall be paid, where the local authority is a county council, out of the public health general assessment leviable within the county or a district of the county, provided that in any royal, parliamentary, or police burgh having, according to the census of nineteen hundred and one, a population of less than seven thousand, a proportion of such expenses corresponding to the valuation of such burgh shall be paid to the county council out of the public health general assessment leviable in such burgh, in compliance with a requisition to that effect to be sent to the town council of such burgh annually not later than the month of October in each year, and, where the local authority is a town council, out of the public health general assessment, and shall be paid, where the local authority is a school board, out of the school rate (s. 15). See also DANGEROUS PERFORMANCES (XIV. *infra*); EDUCATION (XIV. *infra*).

**Children, Sale of Intoxicating Liquors to.**—See INTOXICATING LIQUORS (SALE TO CHILDREN) (XIV. *infra*).

**Circuit Clerks of Justiciary** (see also Vol. III. at p. 55).—The duties of clerk to the High Court of Justiciary, when sitting elsewhere than in Edinburgh, were formerly discharged by three specially appointed clerks called circuit clerks—one for the north, one for the south, and one for the west, circuits. Thereafter it was provided by the Criminal Procedure (Scotland) Act, s. 73, as amended by the Clerks of Session (Scotland) Regulation Act, 1889, s. 10, that on these offices of circuit clerks becoming vacant, they should not be filled up, and that the duties of clerk to the High Court, when sitting elsewhere than in Edinburgh, should be performed by the first assistant clerk of Justiciary and the depute clerks of Session, in rotation as therein provided. This arrangement was found to be unsatisfactory and inconvenient. Accordingly the Circuit Clerks (Scotland) Act, 1898 (61 & 62 Vict. c. 40), repeals the sections of the Acts 1887 and

1889 above referred to, and provides that the duties of clerk of the High Court of Justiciary, when sitting elsewhere than in Edinburgh (the offices of circuit clerks having now ceased by the death of the several occupants), are to be performed by the first and second assistant clerks of Justiciary for the time being, on such terms as shall be fixed by the Treasury. The High Court has power to appoint a clerk or clerks to perform the said duties of clerk at any town or towns, whether circuit towns or not, when the business of the Court requires such appointment to be made, on such terms as may be fixed by the Treasury.

**Close Time.**—See FISHINGS (XIV. *infra*).

**Clubs** (VI. 72 and 90).—*The Shop Clubs Act, 1902* (2 Edw. vii. c. 21), was passed to prohibit compulsory membership of unregistered shop clubs and thrift funds, and to regulate such as are duly registered. It is an offence under the Act if an employer makes it a condition of employment—(a) that any workman shall discontinue his membership of any friendly society, or (b) that any workman shall not become a member of any friendly society other than the shop club or thrift fund (s. 1), or (c) that any workman shall join a shop club or thrift fund, unless the club or fund is registered under the Friendly Societies Act, 1896, subject to the provisions of this Act, and certified under this Act by the Registrar (s. 2). Every person who commits an offence within the meaning of the Act is liable on summary conviction to a fine not exceeding £5; and in the case of a second or subsequent conviction within one year of a previous conviction, to a fine not exceeding £20. Where an offence is committed in respect of several persons at the same time, the offender is not to be convicted of more than one offence (s. 4). No shop club or thrift fund is to be certified unless the Registrar of Friendly Societies is satisfied—(a) that the club or fund is one that affords to the workman benefits of a substantial kind in the form of contributions or benefits at the cost of the employer in addition to those provided by the contributions of the workman; and (b) that the club or fund is of a permanent character, and is not a society that annually or periodically divides its funds, and that no member of such club or fund shall, except in accordance with sec. 6 (*infra*), be required to cease his membership in such club or fund upon leaving the firm with which the club or fund is connected (s. 2). Before so certifying any shop, club, or thrift fund, the registrar shall take steps to ascertain the views of the workmen, and shall be satisfied that at least 75 per cent. of the workmen desire the establishment of such club or fund; and he is to consider any objections which they make to the certification (*ibid.*). The schedule contains regulations which are to apply to any shop, club, or thrift fund certified under the Act (s. 3 and Sched.). Railway superannuation funds, insurances, etc., are exempted from the provisions of the Act (s. 5). Sec. 6 provides that where a workman by the conditions of his employment is a member of a shop club, he shall upon dismissal, or upon leaving his employment, unless contrary to the rules of the club, have the option of remaining a member, or of having returned to him the amount of his share of the funds of the club, to be ascertained by actuarial calculation. If he remains a member, he is not, so long as he remains out of the employment, entitled to take any part in the management of the club, or to vote in respect thereof.

The joint property of all the individuals of a club cannot be alienated by a majority of the members. A challenge cup was presented for competition between certain clubs, who arranged that it should become the property of the club which should first win it two years in succession. The majority of the members of a club who so won it voted that it should be presented to a particular member of the club, but the Court held that this presentation was ineffectual (*Murray*, 1896, 23 R. 981). Where the action of the committee of a football union results in preventing a player from taking part in the matches between affiliated clubs, he has no claim for damages, apart from defamation, unless he can show patrimonial loss (*Murdison*, 1896, 23 R. 449, 3 S. L. T. No. 152; see also *Robinson*, 1900 (O. H.), 7 S. L. T. No. 356).

*Registration of Clubs.*—See LICENSING ACTS (XIV. *infra*).

**Coal Mines Regulation Acts** (III. 67 at p. 70).—As to qualification of managers and undermanagers, the Act 1903, 3 Edw. vii. c. 7, amends 50 & 51 Vict. c. 58, s. 23 (1), by recognising a diploma in scientific and mining training after a course of study of not less than two years at a university, university college, mining school, or other educational institution approved by a Secretary of State; and a degree of a university, to be so approved of, which includes scientific and mining subjects. The holder of the diploma or degree must also have had practical experience in a mine for at least three years. See also CHILDREN (EMPLOYMENT OF) (XIV. *supra*).

**Collation.**—See LEGITIM (XIV. *infra*).

**Colonial Solicitors.**—A solicitor of a superior Court in a British possession to which the Colonial Solicitors Act, 1900 (63 Vict. c. 14), applies, and who has been in practice before the Court for not less than three years, may, on giving due notice and the prescribed proof of his qualifications and good character, without examination, and either after service of articles of clerkship or indentures of apprenticeship during the prescribed period (or, in the prescribed cases, without such service), be admitted a solicitor of the Court of Session, on payment of the prescribed amount in respect of stamp duties and fees. Where the King in Council is satisfied, on the report of a Secretary of State, as respects a superior Court in a British possession—(1) that the regulations as to the admission of persons to be solicitors of that superior Court were such as to secure that those solicitors possess proper qualifications and competency; and (2) that by the law of the British possession the solicitors of the Supreme Court (*i.e.* in Scotland, any enrolled law agent under the Law Agents (Scotland) Act, 1873) will be admitted to be solicitors of the superior Court in the possession, on terms as favourable as those on which it is proposed to admit solicitors of that superior Court under the Act to be solicitors of the Supreme Courts in Great Britain, His Majesty in Council may order that the Act shall apply to the said superior Court and British possession.

**Colonial Stock Acts** (XII. 371).—By the Colonial Stock Act,

1900 (63 & 64 Vict. c. 62), it is not necessary, for the purpose of enabling the Colonial Stock Acts, 1877 and 1892, to be applied to stock issued before the passing of the Act, 1900, that any prospectus, notice, stock certificate, coupon, dividend warrant, or other certificate or document issued before the passing of the Act in relation to the stock, should state the particulars required by sec. 19 of the Act 1877 (s. 1).

*Power for Trustees to invest in Colonial Stock.*—The securities in which a trustee may invest under the powers of the Trusts (Scotland) Amendment Act, 1884, include any Colonial stock which is registered in the United Kingdom in accordance with the provisions of the Colonial Stock Acts, 1877 and 1892, as amended by the Act of 1900, and with respect to which there have been observed such conditions (if any) as the Treasury may by order notified in the *London Gazette* prescribe. The restrictions mentioned in sec. 2 (2) of the Trustee Act, 1893, with respect to the stocks therein referred to, apply to Colonial stock (s. 2). The Treasury is to keep a list of any Colonial stocks in respect of which the provisions of the Act are for the time being complied with, and the list is to be published in the *London and Edinburgh Gazettes* (*ibid.*).

**Common Gable** (III. 125).—The owner of a tenement which is separated from an adjoining tenement by a mutual gable may take down his building without being obliged to provide substituted support for the gable (*Stark's Trs.*, 1900, 37 S. L. R. 944; see also *Calder*, 1900 (O. H.), 8 S. L. T. No. 134).

**Company.**—See JOINT STOCK COMPANY (XIV. *infra*).

**Conditio si sine Liberis** (III. 171).—The benefit of the *conditio si institutus sine liberis decesserit* does not extend to the children of an illegitimate child. These are regarded as strangers in law (*Farquharson*, 1900, 7 S. L. T. No. 425; see also *Earl of Lauderdale* (*Forbes' Exr.*), 1830, 8 S. 771; *Martin's Trs.*, 1865, 3 M. 326).

**Confidential Communications** (III. 183).—Letters passing between a society for the protection of trade and one of its members regarding a third party are not confidential, and may be recovered under a diligence by that third party (*Mathieson*, 1897 (O. H.), 5 S. L. T. No. 280). As to the right to compel disclosure of the name of the writer of an anonymous letter in newspaper, see *Smith & Co.* (1897, 24 R. 471; cf. *Cunningham*, 16 R. 383). The Inland Revenue Department is entitled to refuse production of documents communicated to the department by an informer (*Brown and Another*, 1897 (O. H.), 5 S. L. T. No. 191). In an action of damages for breach of promise of marriage, the pursuer is entitled to recover the defender's income-tax returns, partnership contracts, and business books of the firm with which he is connected (*Stryan*, 1901 (O. H.), 9 S. L. T. No. 202).

**Confusio** (III. 199).—“Confusio does not operate either payment or discharge. It prevents the possibility of a debt arising. It extinguishes

the *jus crediti*. From the moment that the inconsistent characters of debtor and creditor are combined in the same person, both debtor and creditor cease to exist: there is no longer any debt, or any relation of debtor and creditor at all" (per Lord Kinnear, at p. 631, in *Motherwell*, 1903, 5 F. 619; see also *Blantyre*, 1858, 20 D. 1188).

**Congested Districts (Scotland) Act, 1897.**—This Act (60 & 61 Vict. c. 53) makes provision for the administration of sums available for the improvement of congested districts in the Highlands and Islands of Scotland.

**Contempt of Court** (III. 253).—The intimidation of witnesses is contempt of Court (*Forbes*, 1897 (O. H.), 5 S. L. T. No. 253).

**Conviction, Previous** (III. 279).—In summary procedure before a magistrate, it is competent to prove previous convictions in course of the trial (*Cochrane*, 1900, 2 F. (J.) 52). Sec. 67 of the Criminal Procedure (Scotland) Act, 1887, which provides that previous convictions shall not be referred to in presence of the jury, does not apply to anything that takes place before a jury is empanelled to try the case. A Sheriff-substitute at the second diet upon an indictment charging accused with theft and previous convictions of theft, read, in open Court, and in presence of the jurors on the list of assize, the whole indictment to the accused before calling on him to plead. It was held that this procedure was right, and a suspension on the ground of violation of sec. 67 was refused (*White*, 1901, 4 F. (J.) 3).

**Copyright.** *In Music* (III. 305).—Powers of seizure of pirated copies of musical works are conferred on Courts of summary jurisdiction by the Musical (Summary Proceedings) Copyright Act, 1902 (2 Edw. VII. c. 15). Upon the application of the owner of the copyright in any musical work, the Court, if satisfied by evidence that there is reasonable ground for believing that pirated copies of the work are being "hawked, carried about, sold, or offered for sale," may, by order, authorise a constable to seize such copies without warrant, and to bring them before the Court; and on proof that the copies are pirated may order them to be destroyed, or to be delivered up to the owner, if he applies for delivery (s. 1). If any person hawks, carries about, sells, or offers for sale any pirated copy of a musical work, every such pirated copy may be seized by any constable without warrant, on the request in writing of the apparent owner of the copyright, or of his agent thereto authorised in writing, and at the risk of such owner (s. 2). On seizure, the copies are to be conveyed before a Court of summary jurisdiction, and on proof that they are infringements they are to be forfeited, or destroyed, or otherwise dealt with as the Court may think fit (*ibid.*). The Act defines "musical work" as any combination of melody and harmony, or either of them, printed, reduced to writing, or otherwise graphically produced or reproduced. "Musical copyright" is defined as the exclusive right of the owner of such copyright under the Copyright Acts in force for the time being, to do, or to authorise another person to do, all or any of the following things in respect of a musical

work:—(1) To make copies by writing or otherwise; (2) to abridge it; or (3) to make any new adaptation, arrangement, or setting of such musical work, or of the melody thereof, in any notation or system. “Pirated musical work” means any musical work written, printed, or otherwise reproduced without the consent lawfully given by the owner of the copyright (s. 3).

**Councillor of a Burgh** (III. 344).—It is not criminal in a town councillor to accept a bribe to use his influence with the licensing magistrates to procure the granting of a licence. Having accepted a bribe, he is under no obligation to repay it in the event of his being thereafter made a licensing magistrate. If, as a magistrate, he vote for the licence he was previously bribed to procure, he is not guilty of any crime (*Dick*, 1901, 3 F. (J.) 59).

See also TOWN COUNCILS ACTS (XIV. *infra*).

**County Council** (III. 346).—The County Councils (Bills in Parliament) Act, 1903 (3 Edw. VII. c. 9), empowers County Councils to promote Bills in Parliament. Sec. 2 provides that, notwithstanding any provision to the contrary therein contained, the powers conferred on a County Council by sec. 56 of the Local Government Act, 1889, as read with subsec. (1) of sec. 11 of the Private Legislation Procedure Act, 1899, shall be extended so as to authorise such council to promote Provisional Orders or Bills under or in pursuance of the last-mentioned Act, as well as to oppose them.

See also ANCIENT MONUMENTS (XIV. *supra*).

**Court Martial** (III. 369).—See also *Smith v. The Lord-Advocate* (1897, 5 S. L. T. No. 25 and No. 76, 25 R. 112, 35 S. L. R. 117).

**Cremation** (XIII. 243, Appendix).—The Legislature has now given its sanction to this mode of disposing of the remains of the dead, and has prescribed regulations for carrying it out. The Cremation Act, 1902 (2 Edw. VII. c. 8), does not apply to Ireland. It applies to Scotland; but it is conceived in terms and provisions applicable specially to England, and which, in some cases, are meaningless in relation to Scotland. The powers of a burial authority to provide and maintain burial grounds or cemeteries, or anything essential, ancillary, or incidental thereto, are extended to and include the provision and maintenance of crematoria (s. 4). In Scotland the burial authority is the parish council or town council of any parish or burgh, as the case may be, vested with the powers and duties conferred by the Burial Grounds Act, 1855 (18 & 19 Vict. c. 58), or any Act amending the same (s. 3). No human remains are to be burned in any such crematorium until the plans and site have been approved by the Local Government Board for Scotland, and until the crematorium has been certified by the burial authority to the Secretary for Scotland to be complete, built in accordance with such plans, and properly equipped for the disposal of human remains by burning (s. 4). No crematorium may be constructed nearer to any dwelling-house than two hundred yards, except with the consent in writing of the owner, lessee, and occupier; nor within fifty yards

of any public highway, nor in the consecrated part (*sic*) of the burial ground of any burial authority (s. 5). A burial authority may accept a donation of land or money for the construction of a crematorium (s. 6). Power is conferred on the Secretary for Scotland to make regulations dealing with crematoria, and as to the registration of the burnings therein, and these are to be laid before both Houses of Parliament (s. 7). The statutory provisions relating to the destruction and falsification of registers of burials, and the admissibility of extracts therefrom as evidence in Courts or otherwise, are to apply to the register of burnings; and the Stamp Act, 1891, is to apply to the register as if it were a register of burials (*ibid.*). The burial authority may charge fees according to a table to be approved by the Local Government Board for Scotland (s. 9). These fees, and any other expenses properly incurred in or in connection with the cremation of a deceased person, are to be deemed part of the funeral expenses of the deceased (*ibid.*). Sec. 8 prescribes penalties for breach of regulations, making false declarations, etc. Every person who, with intent to conceal the commission or impede the prosecution of any offence, procures or attempts to procure the cremation of any body, or with such intent makes any declaration or gives any certificate under the Act, is liable on conviction or indictment to penal servitude for five years (s. 8 (3)).

### **Criminal Evidence Act, 1898.—See XIII. 210.**

**Criminal Law Amendment Act, 1885 (III. 376).**—It is competent on an indictment for rape to convict of the statutory offence (under s. 4) of having unlawful and carnal knowledge of a girl under the age of thirteen, although the statutory charge is not libelled in the indictment (s. 9) (*H.M. Advocate v. M'Laren*, 1897, 2 A. 395, 25 R. (J.) 25, 5 S. L. T. No. 221, 35 S. L. R. 52. Lord M'Laren stated that he did not concur in the contrary view of the Lord Justice-Clerk in *H.M. Advocate v. Henderson*, 1888, 2 *White*, 157).

**Croft: Crofters' Holdings (Scotland) Acts (III. 393).**—The fact that the Crofters' Commission have, in a proceeding before them, held a person to be a "crofter," does not preclude a Court of law from considering whether he is a "crofter" when the question is raised in an action of removing, brought on the averment that, at the date of the Crofters Act, he was not a "crofter" (*Sitwell*, 1899, 1 F. 950, 7 S. L. T. No. 89, 36 S. L. R. 762; see also *Balfour*, 1899 (O. H.), 7 S. L. T. No. 116). The Crofters' Commission is not a Court of law, and the plea *lis alibi pendens* does not apply (*Marquess of Breadalbane*, 1897 (O. H.), 4 S. L. T. No. 118). A croft and a right of ferry held together do not fall under the definition of a "croft" (*ibid.*). The eldest of heirs-portioners is entitled to the succession of a croft (s. 19); and, if she renounce, the right passes to her representatives, not to her sisters (*Balfour*, 1899 (O. H.), No. 116).

**Crown.—See DEMISE OF THE CROWN (XIV. *infra*) and INTERNATIONAL PRIVATE LAW (XIV. *infra*).**

**Curator** (to Minor) (IV. 27).—A petition for the appointment of a judicial factor, in room of a factor deceased, ought to pray for the discharge of the late factor; otherwise the expenses of a separate note for this purpose will be found due by the party presenting it (*Dalziel*, 1898 (O. H.), 5 S. L. T. No. 328). A judicial factor petitioning for restriction of the amount of his caution, is not entitled to the expenses of the application out of his ward's estate (*Guillan's Factor*, 1897 (O. H.), 4 S. L. T. No. 448).

See, as to *curator bonis* (to Incapax), JUDICIAL FACTOR (XIV. *infra*).

**Custody of Children** (IV. 50).—An order by the Lord Ordinary, in terms of the Conjugal Rights (Scotland) Act, 1861, regulating the custody of the pupil children of the marriage, ceases to be operative with regard to each child when it emerges from pupillarity (*Watson*, 1895, 23 R. 219). The Sheriff has no jurisdiction to entertain petitions for the permanent custody of children, or petitions where questions of desertion of the children by the mother are raised in bar of her right to demand their production (*Gillan*, 1898, 1 F. 183, 6 S. L. T. No. 217, 36 S. L. R. 135). Where a widow, shortly before her death, had placed her three pupil children in a Protestant home where they were well cared for, the Court refused (on a petition by their nearest male agnates, who were Roman Catholics) to disturb the arrangements for their upbringing and religion which had been made by their mother, and had continued for three years (*Kincaid*, 1896, 23 R. 676, 3 S. L. T. No. 503, 33 S. L. R. 492). Where a mother petitioned for the custody of her illegitimate child from a person who had with her consent adopted it, the Court ordered her to pay a sum to the adopter for past aliment, but refused to make such a payment *a condition* of the delivery of the child (*Kerrigan*, 1901, 4 F. 10; see also *Mackellar*, 1898, 25 R. 833, 6 S. L. T. No. 26, 35 S. L. R. 483; *Rintoul*, 1898, 1 F. 22, 6 S. L. T. No. 301, 36 S. L. R. 21; *Hogan*, 1899, 36 S. L. R. 669; *Marchetti*, 1901, 9 S. L. T. No. 27, 38 S. L. R. 696).

**Dangerous Performances.**—The Children's Dangerous Performances Act, 1879 (42 & 43 Vict. c. 34), as amended by the Dangerous Performances Act, 1897 (60 & 61 Vict. c. 52), provides that any person who shall cause any male young person under the age of sixteen, or any female young person under the age of eighteen years, to take part in any public exhibition or performance whereby, in the opinion of a Court of summary jurisdiction, the life or limbs of such young person shall be endangered, and the parent or guardian, or any person having the custody, of such young person, who shall aid or abet the same, shall severally be guilty of an offence against the Acts, and shall on summary conviction be liable for each offence to a penalty not exceeding £10 (Act 1879, s. 3, Act 1897, s. 1). Where in the course of a public exhibition or performance, which in its nature is dangerous to the life or limb of such young person taking part therein, any accident causing actual bodily harm occurs to any such young person, the employer of such young person shall be liable to be indicted as having committed an assault; and the Court before whom such employer is convicted, on indictment, shall have the power of awarding compensation not exceeding £20, to be paid by such employer to the young person, or to some person named by the Court on behalf of the young person, for the bodily harm so occasioned; provided that no person shall be

punished twice for the same offence (*ibid.*). When a person is charged with an offence against the Acts in respect of a child or young person who in the opinion of the Court trying the case is apparently of the age alleged by the informant (*sic*), the *onus* is on the accused to prove that the young person is not of that age (1879, s. 4). Except where an accident causing actual bodily harm occurs to any child or young person, no prosecution or other proceedings shall be instituted for an offence against the Acts without the consent in writing of the chief officer of police (within the meaning of the Police Act, 1890) of the police area in which the offence is committed (1897, s. 2). Every offence against the Acts, in respect of which the person committing it is liable, as above mentioned, to a penalty not exceeding £10, is to be prosecuted, and the penalty recovered, with costs, in a summary manner, in accordance with the provisions of the Summary Procedure Act, 1864, and of any Act or Acts amending the same (1879, s. 5).

**Declinature** (IV. 122).—It is doubtful whether a minute by the parties waiving the declinature of judges is competent in a criminal case (*Caledonian Railway Co.*, 1897, 2 Ad. 221, 24 R. (J.) 48, 4 S. L. T. No. 365, 34 S. L. R. 526). A magistrate who is an *ex officio* trustee of a public library is not disqualified from acting as judge in an action at the instance of a public prosecutor against a person accused of wilfully causing damage to the furniture of the library (*Weldridge*, 1897, 2 Ad. 399, 25 R. 27, 5 S. L. T. No. 272, 35 S. L. R. 125).

**Deeds, Execution of** (IV. 129).—Where a deed, executed notarially, and the notary's docquet are all written on one page, it is not necessary that the notary should subscribe the deed itself; it is sufficient that he subscribed before witnesses the notarial docquet (*Mathieson*, 1899, 1 F. 468, 6 S. L. T. No. 386, 39 S. L. R. 256).

**Defamation** (IV. 145).—*Privilege*.—In an action of damages for slanderous expressions used during the course of an arbitration, it was held that the occasion having been of a *quasi-judicial* character, malice must go into the issue (*Neill*, 1901, 3 F. 387, 8 S. L. T. No. 301, 38 S. L. R. 286; *Hay*, 1898 (O. H.), 6 S. L. T. No. 67). A judge in the Supreme or Lower Courts has absolute privilege to say whatever he pleases that has a bearing upon the dispute before him (*Primrose*, 1902, 4 F. 783, 10 S. L. T. No. 19, 39 S. L. R. 475). A newspaper is responsible for defamatory matter published as an advertisement (*Morrison*, 1902, 4 F. 654, 9 S. L. T. No. 404, 39 S. L. R. 432; see also *M'Lean*, 1900 (O. H.), 8 S. L. T. No. 31).

**Defences** (IV. 155).—Where appearance was entered but no defences lodged, and the pursuer enrolled the case for decree in the undefended roll, the defender was allowed to lodge defences at the bar (*London and Midland Bank*, 1898 (O. H.), 6 S. L. T. No. 38). In a divorce action, the Court, on a reclaiming note, after proof had been led before the Lord Ordinary, and decree of divorce granted, allowed defences to be lodged, and remitted to the Lord Ordinary to take further evidence (*Cathcart*, 1899, 1 F. 781, 7 S. L. T. No. 4, 36 S. L. R. 596).

**Demise of the Crown** (IV. 193).—The Demise of the Crown Act, 1901 (1 Edw. VII. c. 5), enacts that the holding of any office under the Crown, whether within or without His Majesty's dominions, shall not be affected, nor shall any fresh appointment thereto be rendered necessary, by the demise of the Crown. The enactment takes effect from the last demise of the Crown.

**Deposition or Deposit** (IV. 199).—Deposit of a sum of money *custodiae causa* is not a “bargain concerning moveables or sums of money” in the sense of the Act 1669, c. 9, and the quinquennial prescription does not apply (*Taylor*, 1901, 4 F. 79).

**Designs.**—See PATENT (XIV. *infra*).

**Diseases of Animals Act, 1903** (see III. 243).—The Act 3 Edw. VII. c. 43, provides for the compulsory adoption of remedies for sheep scab, etc. Sec. 22 of the Diseases of Animals Act, 1894 (which empowers the Board of Agriculture to make orders for the better prevention of disease among animals, and to authorise local authorities to make regulations for that purpose), is to be construed as if the following paragraph were inserted therein: “(xiii. a) For prescribing, regulating, and securing the periodical treatment of all sheep by effective dipping, or by the use of some other remedy for sheep scab” (s. 1). Power is given to an inspector of the Board of Agriculture to enter any premises and examine the sheep there (s. 2), and to the local authority to provide facilities for sheep dipping (s. 3).

**District Committee** (IV. 302).—It is within the powers of a district committee, on a requisition by at least ten parish electors, to form a parish, or portion thereof, into a special scavenging district, by putting into operation sec. 44 of the Local Government Act, 1894; but, if they desire to have a title to “the dust, night-soil, etc.” which formerly belonged to the inhabitants of the district, they must be careful to adopt in terms sec. 107 of the Burgh Police Act, 1892 (*Hill*, 1899, 2 Ad. 666, 1 F. (J.) 42, 6 S. L. T. No. 371, 36 S. L. R. 317).

**Disorderly House** (IV. 251).—See also IMMORAL TRAFFIC (SCOTLAND) ACT, 1902 (XIV. *infra*).

**Divorce** (IV. 307).—*Adultery*.—Delay, even although the spouse has suspicions, is no bar to bringing an action of divorce for adultery (*Gathell*, 1898 (O. H.), 6 S. L. T. No. 279—a delay of over seven years; see also *Robertson*, 1901 (O. H.), 9 S. L. T. No. 277). Where a domiciled Scotsman has committed adultery, he cannot deprive his wife of her right of action of divorce by subsequently changing his domicile (*Sutherland*, 1899, 6 S. L. T. No. 445). Conviction for rape, along with letters from the criminal in which he referred to his imprisonment without denying his guilt, was held sufficient

ground for divorce for adultery (*Galbraith*, 1902 (O. H.), 9 S. L. T. No. 291).

**Desertion.**—An attempt, *in bona fide*, by a husband to have his wife shut up in a lunatic asylum does not justify her in refusing to cohabit with him, and is no defence to an action of divorce for desertion at his instance (*Cathcart*, 1900, 2 F. 404, 7 S. L. T. No. 4, 37 S. L. R. 337). A wife cannot sue for divorce on the ground of desertion unless she would be *in titulo* to demand adherence by him (*Hunter*, 1900, 2 F. 771, 7 S. L. T. No. 168, 37 S. L. R. 537).

**Donation Mortis Causa** (IV. 338).—In order to constitute donation *mortis causa*, it is essential that the gift be made in expectation of death, and that there be delivery or its equivalent (per Lord Young in *Rose*, 1901, 3 F. 337). In the same case, however, he reserved his judgment on the question whether delivery is essential: “the decisions on the point are not uniform” (p. 341). A lady took a deposit receipt in favour of herself and A. B., or the survivor, the money on deposit being her own property. She left it in charge of A. B.’s mother, in whose custody it still was at the depositor’s death. It was held that there was an effectual donation to A. B. of the sum in the receipt (*Lind*, 1900 (O. H.), 8 S. L. T. No. 240).

**Drainage.**—See BURGH (XIV. *supra*).

**Drunkards, Habitual** (IV. 359; XIII. 244).—Two amending Acts have been passed dealing with this subject. The Inebriates Act of 1899 (62 & 63 Vict. c. 35) provides that, where by any regulations made in pursuance of sec. 6 of the Act of 1898, a breach of the regulations is made punishable by fine or imprisonment, the breach shall be an offence which may be prosecuted summarily. The Inebriates Amendment (Scotland) Act, 1900 (63 & 64 Vict. c. 28), enacts that every person who in any road, street, or public place, or in any building to which the public have access, commits the offence of behaving, while drunk, in a riotous or disorderly manner, may be prosecuted summarily on a charge under the Act, and shall be liable on conviction to a penalty not exceeding forty shillings, and, failing payment, to imprisonment for a period not exceeding seven days, or, in the discretion of the magistrate, to imprisonment for a period not exceeding seven days. An offence under this provision is to be deemed to be an offence mentioned in the First Schedule to the Inebriates Act, 1898 (s. 2). The Act also repeals sec. 25 (c) of the Act of 1898, and gives power to county councils and town councils, for the purpose of defraying expenditure under the Act of 1898, (1) to impose and levy an assessment in the same manner and subject to the same conditions as the public health general assessment authorised by the Public Health (Scotland) Act, 1897; and (2) to borrow money on the security of the said assessment for the capital purposes of the Act of 1898, in the same manner and subject to the same conditions as for the purposes enumerated in sec. 141 of the Public Health (Scotland) Act, 1897 (s. 1).

See also LICENSING ACTS (XIV. *infra*, at p. 51).

**Ecclesiastical Assessments** (see IV. 367).—The Ecclesi-

astical Assessments (Scotland) Act, 1900 (63 & 64 Vict. c. 20), provides that, where in any parish it is necessary to impose an ecclesiastical assessment which, according to previous use and wont in the parish, would fall to be imposed according to the valued rent, but which it would be competent to impose according to the real rent, it shall be lawful for any valued heritor to request the clerk to the heritors to summon a meeting of valued rent heritors in the manner prescribed by sec. 22 of the Ecclesiastical Buildings and Glebes (Scotland) Act, 1868 ; and if at such meeting it is resolved by a majority of not less than two-thirds in value of valued rent heritors, voting personally or by proxy, that the amount shall be imposed according to the valued rent, such assessment shall be imposed according to the *valued* rent, any law to the contrary notwithstanding (s. 1). When it has been resolved to levy an assessment in a parish according to the *real* rent, intimation of the resolution is to be made to the presbytery of the bounds and to the kirk-session ; and a scheme showing the heritors proposed to be assessed, and the amount of their respective assessments, is to be made up, which is to be open, free of charge, to the inspection of persons interested (s. 2). Where the assessment is imposed according to *real* rent, lands and heritages occupied solely as the church and accessory buildings or burying-ground attached of any religious body, or as the dwelling-house with offices, or garden or glebe or glebe land attached, of the minister of such church, are exempted (s. 3 (1)). As to deductions, see sec. 3 (2).

**Education** (IV. 368).—In regard to the additional grant to school boards, the Education (Scotland) Act, 1897 (60 & 61 Vict. c. 61, s. 1), alters the limit of 7s. 6d. under sec. 67 of the Act of 1872 (see *Scottish Education Department*, 1902, 4 F. 587). The Act (s. 2) provides for an aid grant of 3s. per child to voluntary schools (*i.e.* State-aided day-schools not provided by a school board); and (s. 3) it exempts voluntary schools from school rates.

The Education (Scotland) Act, 1901 (1 Edw. vii. c. 9), further regulates the employment and attendance of children at school. The principle is laid down that—"It shall be the duty of every parent to provide efficient elementary education in reading, writing, and arithmetic for his children who are between five and fourteen years of age" (s. 1). It is not lawful for any person to take into his employment (1) a child under the age of 12 ; or (2) a child between the ages of 12 and 14 who has not obtained exemption from the obligation to attend school from the school board of the district (in the manner provided by sec. 3 of the Act) (s. 2). A child (1) who is under 12, or (2) who, being between 12 and 14, has not obtained exemption as above stated, is not to be employed in any casual employment (as defined by sec. 6 of the Education (Scotland) Act, 1878) after nine o'clock at night from 1st April to 1st October, or after seven o'clock at night from 1st October to 1st April (*ibid.*). There is a saving in the case of children lawfully employed at the commencement of the Act. The Act repeals secs. 69 and 73 of the Act of 1872 ; secs. 5, 6 (partly), and 7 (partly) of the Act of 1878 ; and secs. 4, 6, 7, and 8 of the Act of 1883.

As to the intervention of school boards in petitions to the Court for approval of educational schemes, and as to examples of cases where such intervention was held *intra vires* and *ultra vires* respectively, see *Largs Kirk-Session* (1899, 1 F. 915 ; and *Fraser*, 1901 (O. H.), 9 S. L. T. No. 233).

An action by persons describing themselves as "parents" of hundreds

of children whom they cared for in connection with orphan homes, against the school board of the district to have them ordered to provide sufficient accommodation for the education of the children, was dismissed as irrelevant (*MacFadzean and Others*, 1902, 5 F. 600, 10 S. L. T. No. 450).

A school board is not bound to supply books for the use of children attending the school, nor is it bound to admit to the school a scholar presenting himself unprovided with such books as are necessary for his efficient education (*Haddow*, 1898, 25 R. 988, 6 S. L. T. No. 72, 35 S. L. R. 736). But school boards which accept the Government grant (which precludes them from charging their scholars "fees"), can make no claim against them for the cost of books, etc.; and they can make no such claim under the Factory and Workshops Act, 1878, against employers of scholars as "half-timers" (*Dundee School Board*, 1899, 1 F. 909, 7 S. L. T. No. 58, 36 S. L. R. 718).

See also REFORMATORY SCHOOLS (XIV. *infra*).

### **Election, or Approbate and Reprobate** (IV. 386).—

A *curator bonis* is entitled to elect, on behalf of his insane ward, between legitim and a conventional provision, where it appears that the election is made in the interest of the ward, and that there is no probability of his ever being restored to sound mind (*McCall's Trs.*, 1901, 8 S. L. T. No. 236, 38 S. L. T. 778). (See also *Dunean's Trs.*, 1901, 3 F. 533, 8 S. L. T. No. 358, 38 S. L. R. 401; *Moon's Trs.*, 1899, 2 F. 201, 7 S. L. T. No. 263, 37 S. L. R. 140; and (equitable compensation) *Cattanach's Trs.*, 1901, 4 F. 205, 9 S. L. T. No. 247, 39 S. L. R. 154; *Lee's Trs.*, 1897 (O. H.), 4 S. L. T. No. 325.)

**Electric Lighting** (V. 19).—The Electric Lighting (Scotland) Act, 1902 (2 Edw. VII. c. 35), dealing only with loans borrowed after its date, enacts that the amount which a local authority (within the meaning of the schedule to the Act of 1890) may borrow under sec. 8 of the Act of 1882, shall not be subject to any limit imposed on the amount which such local authority may borrow for the purposes of its gas undertaking; provided that every loan so borrowed, with consent of the Secretary for Scotland, after the passing of the Act, shall be repaid by the local authority within a period not exceeding thirty years from the date of borrowing.

**Electrical Power on Railways.**—See RAILWAYS (ELECTRICAL POWER) ACT, 1903 (XIV. *infra*).

**Entail** (V. 27).—In estimating the value of expectancies of heirs of entail, the contingent rights of charging the estate with provisions and of disentailing are factors in the calculation (*Bankes*, 1899, 1 F. 1194, 7 S. L. T. No. 165, 38 S. L. R. 936). A petition to fix the utmost amount chargeable on an entailed estate as provisions to wife and children is competent (*Paterson's Tutors*, 1899 (O. H.), 7 S. L. T. 233). An heir of entail in possession may petition under sec. 11 of the Entail Amendment Act, 1868, for authority to charge estate duty and settlement estate duty as a burden upon the entailed estates by granting a bond and disposition in security. He is not, however, entitled to add the expenses either of

ascertaining the amount of these duties or of his petition (*Lawrie*, 1898, 25 R. 636, 5 S. L. T. No. 416, 35 S. L. R. 498).

**Evidence** (V. 107; XIII. 210).—For observations by the judges of the First Division on the “improper” practice of calling the defendant as the first witness for the pursuer in actions of affiliation and aliment, and as to the extent to which, if she does so, she must be held to present him to the Court as a witness of credit, see *M'Arthur* (1901, 3 F. 1010). With the opinions in that case the judges of the Second Division were unable to agree, and they expressed the view that the pursuer in such actions has a legal right to call the defendant as her first witness, and in so doing is not to be held to present him to the Court as a witness of credit (*Darroch*, 1901, 4 F. 396). In proving a loan of money by writ, it is not necessary that the writ should be holograph or tested (by whole Court, *diss.* Lords Young and Adam, in *Paterson*, 1897, 25 R. 144).

See also LODGING PAPERS (XIV. *infra*).

**Executor** (V. 140).—The law relating to executors has been amended in several important respects by the Executors (Scotland) Act, 1900 (63 & 64 Vict. c. 55).

1. *Powers of Executors nominate.*—Unless the contrary be expressly provided in the trust deed, all executors nominate now have the whole powers, privileges, and immunities, and are subject to all the limitations and restrictions, which from time to time gratuitous trustees have, or are subject to, under the Trusts (Scotland) Acts, 1861 to 1898, or this Act, or any Act amending the same, and otherwise under the statute and common law of Scotland (s. 2).

2. *Who may be confirmed Executors nominate.*—Where a testator has not appointed any person to act as his executor, or failing any person so appointed, the testamentary trustees of such testator, original or assumed, or appointed by the Supreme Court (if any), failing whom any general donee or univeral legatory or residuary legatee appointed by such testator, are to be held to be his executor nominate, and entitled to confirmation in that character (s. 3).

3. *Powers, etc., of Executors dative where more than one.*—In all cases where confirmation is, or has been, granted in favour of more executors dative than one, the powers conferred by it accrue to the survivors or survivor, and while more than two survive a majority is a quorum, and each is liable only for his own acts and intromissions (s. 4).

4. *Confirmation to contain Inventory.*—All confirmations of personal estate must have embodied therein, or appended thereto, the inventory of estate confirmed, and the forms of confirmation prescribed by the Confirmation of Executors (Scotland) Act, 1858, s. 10, Schedules D and E, are to be amended accordingly, by the insertion of words referring to the inventory as being embodied therein or appended thereto, or words to that effect (s. 5).

5. *Transmission of Trust Funds by Executors of sole or last surviving Trustee.*—When any sole or last surviving trustee or executor nominate has died with any funds in Scotland standing or invested in his name as trustee or executor, confirmation by his executors nominate (if any) to the proper personal estate of such trustee or executor nominate, or the probate granted in England or Ireland to his executors, and produced and certified by the

commissary clerk of Edinburgh, whether granted before or after the passing of this Act, is valid, and available to such executors for recovering such funds, and for assigning and transferring the same to such person or persons as may be legally authorised to continue the administration thereof, or, where no other act of administration remains to be performed, directly to the beneficiaries entitled thereto, or to any person or persons whom the beneficiaries may appoint to receive and discharge, realise and distribute the same, provided always that a note or statement of such funds shall have been appended to any inventory or additional inventory of the personal estate of such deceased trustee or executor nominate given up by his executors nominate in Scotland, and duly confirmed; and "provided further that nothing herein contained shall bind executors of a deceased trustee or executor nominate to make up title to such funds, nor prejudice nor exclude the right of any other person to complete a title to such funds by any proceedings otherwise competent" (s. 6).

6. *Confirmation ad non executa.*—Where any confirmation has become inoperative by the death or incapacity of all the executors in whose favour it has been granted, no title to intromit with the estate confirmed therein shall, otherwise than in the circumstances and to the extent authorised by sec. 5, transmit to the representatives of any such executors, whatever may be the extent of their beneficial interest therein, but it is competent to grant confirmation *ad non executa* to any estate contained in the original confirmation which may remain unuplifted or untransferred to the persons entitled thereto, and such confirmation *ad non executa* shall be granted to the same persons, and according to the same rules, as confirmations *ad omissa* are at present granted, and shall be a sufficient title to continue and complete the administration of the estate contained therein, provided always that nothing contained in the Act shall be held to affect the rights and preferences at present conferred by confirmation on executors creditors (s. 7).

7. *Oaths.*—Oaths and affirmations to inventories of personal estate given up to be recorded in any Sheriff Court, and to revenue statements appended thereto, may be taken before the Sheriff or Sheriff-substitute, or any commissioner appointed by the Sheriff, or before any commissary clerk or his depute, or, where the office of commissary clerk has been abolished, before any Sheriff clerk or his depute, or before any notary public, magistrate, or justice of the peace, in the United Kingdom, and also, if taken in England or Ireland, before any commissioner for oaths appointed by the Courts of these countries, or if taken at any place out of the United Kingdom, before any British consul, or local magistrate, or any notary public practising in such foreign country, or admitted and practising in Great Britain or Ireland (s. 8).

8. *Amendment of Small Estates Acts.*—(1) It is competent for any person entitled to apply for confirmation under the Intestates' Widows and Children (Scotland) Act, 1875, and the Small Testate Estates (Scotland) Act, 1876, as extended by the Customs and Inland Revenue Act, 1881, s. 34, and the Finance Act, 1894, s. 16, to apply to any officer of inland revenue duly appointed for the purpose, and the said officer shall prepare and fill up the form of inventory and oath or affirmation and revenue statement appended thereto, and shall take the oath of the applicant thereto, and such evidence as he may think sufficient to establish the identity and relationship or title of the applicant and the value of the estate; and where caution is required, shall also prepare and fill up the bond of caution, and on the same being signed, and such attestation of the

sufficiency of the cautioner as he may consider necessary being obtained, and the said inventory and bond (if any) being duly stamped, where stamps are required, the said officer shall transmit the same, along with any testamentary writings that may be exhibited, and the prescribed *ad valorem* fee chargeable on the confirmation, to the clerk of the Court where confirmation falls to be issued. The clerk, if satisfied that the applicant is entitled to confirmation, records the inventory and relative writs (if any), and expedites confirmation and transmits the same, with any writs which may fall to be returned, to the officer for delivery to the applicant (s. 9). The necessary appointments and regulations are to be made by and under the authority of the Commissioners of Inland Revenue (*ibid.*).

**Expenses** (V. 156).—A husband gave his consent and concurrence to an action by his wife for damages for personal injuries. He appeared as a witness on her behalf at the trial. The jury having returned a verdict for the defender, the Court found the husband and wife jointly and severally liable in expenses (*Maxwell*, 1901, 3 F. 638, 38 S. L. R. 443; *Picken*, 1901, 4 F. 39, 39 S. L. R. 31). As to *modification of expenses* in jury trials where the award of damages is small—as to which the practice is not uniform—see *Casey* (1902, 4 F. 811, 10 S. L. T. No. 56); *Fraser*, 1903, 10 S. L. T. No. 406; *Lafferty*, 3rd June 1903, 11 S. L. T. p. 81; and *Watt*, 11th June 1903 (O. H.), 11 S. L. T. p. 118).

**Caution.**—The leading principle is that no pursuer is obliged to find caution for expenses on account of deficiency of funds, unless he either has been divested of his estate or is manifestly a mere catspaw (*Porteous*, 1901 (O. H.), 8 S. L. T. No. 340). A pauper in receipt of parochial relief must sue *in forma pauperis*, or find caution for expenses, even in an action for the vindication of his character (*Fraser*, 1901 (O. H.), 9 S. L. T. No. 98; see also *Robertson*, 1898, 25 R. 569, 5 S. L. T. No. 414, 35 S. L. R. 455). A husband against whom decree of *cessio* has been pronounced may sue an action of divorce for adultery against his wife and her alleged paramour without finding caution for expenses (*Derrick*, 1900 (O. H.), 8 S. L. T. No. 247).

**Factory and Workshops Acts** (V. 212).—The Factory and Workshops Act, 1901 (1 Edw. VII. c. 22), consolidates, and in important particulars amends, the law on this subject. The result is to render no longer complete the statement of the law set out in the fifth volume of the *Encyclopaedia*, while the references to sections of statutes which are there given are, of course, superseded.

**AMENDMENTS.**—The important amendments and extensions introduced by the new Act are these:—1. *Health and Safety.*—The Secretary of State may modify the proportion of cubic space prescribed where a workroom is occupied by night as a sleeping apartment (s. 3); and may direct thermometers to be provided in factories and workshops (s. 6). Sufficient means of ventilation must be provided and maintained (s. 7); and sufficient means of draining the wet off wet floors must be provided (s. 8). Steam-boilers must be properly maintained and periodically examined (s. 11), and their use may be prohibited if dangerous (s. 17). A child may not clean under machinery in motion (s. 13). Means of escape in case of fire must be maintained in repair (s. 14); and district councils (*i.e.* the local authority under the Public Health (Scotland) Act, 1867) may make bylaws as to

means of escape from fire (ss. 15, 159). 2. *Employment and Overtime*.—The period of Saturday employment in textile factories is shortened by one hour (s. 24); while overtime employment of women for press of work is forbidden on Saturdays (s. 49), and of women on perishable articles is reduced from five days a week to three, and from sixty days to fifty in any twelve months (s. 50). 3. *Age and Fitness for Employment*.—Children under the age of twelve may not be employed (s. 62). A qualified certificate of fitness may be granted (s. 64). 4. *Exceptions and Additions*.—The processes of *fish and fruit preserving* are now, with certain exceptions, brought within the Acts (s. 41). The Secretary of State may vary the period of employment of women and young persons employed in *creameries* (s. 42); and may exempt from the Act any factory or workshop working on a Government contract (s. 150). 5. *Dangerous and Unhealthy Industries*.—Employees may not take meals, or remain during meal hours, where there is poisonous dust, or fumes, etc. (s. 75). New procedure is provided for making regulations for dangerous trades (ss. 80 to 85). 6. *Tenement Factories*.—The provision as to the owner being substituted for the occupier now applies to all tenement factories, and is not restricted (s. 87); the whole building is to be deemed one factory or workshop for the purposes of the provisions as to means of escape in case of fire (s. 14); and power is given to occupiers to affix their own notices. 7. *Bakehouses*.—Underground bakehouses must not be used unless certified by the district council (see s. 159) to be suitable (s. 101). 8. *Railway Sidings* used in connection with factories come under the provisions of the Act (s. 106). 9. *Home Work*.—Lists of outworkers are to be sent to the district councils (*i.e.* the local authority under the Public Health Act) (s. 107). District councils may give notice to occupiers that premises where home work is done are unwholesome (s. 108); and home work is prohibited in any place where there is an infectious disease (s. 110). The Act is applied to domestic factories and workshops where dangerous processes are carried on as though they were ordinary factories or workshops (s. 112). 10. *Notices, Registers, and Returns*.—A new register, called the general register, is to be kept in every factory and workshop (s. 129). The periodical return of persons employed is to be made to the Chief Inspector at times directed by the Secretary of State (s. 130). Every district council (see s. 159) must keep a register of all workshops within the district (s. 131). Medical officers of health must report annually to the district councils, and to the Secretary of State, on the administration of the Act in workshops and workplaces (s. 132). 11. *Education*.—Certificates of proficiency and due attendance are no longer required in Scotland owing to the passing of the Education (Scotland) Act, 1901, which substitutes other provisions for exemption (s. 159). See EDUCATION (XIV. *supra*). 12. *Definitions*.—Electrical stations are non-textile factories (Sched. 6, Part I.). Dry-cleaning, carpet-beating, and bottle-washing works in which power is used are non-textile factories (Sched. 6, Part II.). “Men’s workshops” means workshops conducted on the system of not employing any woman, young person, or child therein (s. 157). The term “domestic factory” is introduced (s. 115), and “continuous employment” is defined (s. 156).

[See Redgrave, *Factory Acts*, 9th edition.]

**Fine** (V. 329; I. 296).—See IMPRISONMENT (*In Default of Payment of Fines*) (XIV. *infra*).

**Fircarms** (V. 331).—See PISTOLS ACTS, 1903 (XIV. *infra*).

**First Offenders** (VI. 2).—See also YOUTHFUL OFFENDERS (XIV. *infra*).

**Fishings** (VI. 3 and 22).—The Board of Agriculture and Fisheries Act, 1903 (3 Edw. vii. c. 31), transfers to the Board of Agriculture (hereafter to be styled The Board of Agriculture and Fisheries, s. 1 (1)) the powers and duties of the Board of Trade under the following enactments, and under any certificate given or made in pursuance of any of these enactments, and any powers or duties of the Board of Trade, or any officer of the Board, under any local and personal Act which relates solely to the industry of fishing (s. 1 (2)). The enactments, in so far as affecting Scotland, are (Sched.):—33 & 34 Vict. c. 33 (The Salmon Acts Amendment Act, 1870); 40 & 41 Vict. c. 65 (The Fisheries (Dynamite) Act, 1877); 54 & 55 Vict. c. 37 (The Fisheries Act, 1891, Parts III. and IV.); 54 & 55 Vict. c. 37 (The Fisheries Act, 1891, Part II.); 31 & 32 Vict. c. 45 (The Sea Fisheries Act, 1868, Part III.); 32 & 33 Vict. c. 31 (The Oyster and Mussel Fisheries Orders Confirmation Act, 1869 (No. 2)); 38 & 39 Vict. c. 15 (The Sea Fisheries Act, 1875); 40 & 41 Vict. c. 42 (The Fisheries (Oyster, Crab, and Lobster) Act, 1877); 47 & 48 Vict. c. 27 (The Sea Fisheries Act, 1884); 59 & 60 Vict. c. 48 (subsec. 1 of sec. 5 of the Light Railways Act, 1896, so far as it relates to the industry of fishing). Provision is made for carrying out the above transfer of powers.

Where any portion of the seashore proposed to be comprised in an order under Part III. of the Sea Fisheries Act, 1868, is under the management of the Board of Trade, the order is not to be made without consent of that Board, and sec. 46 of that Act is to be construed accordingly (s. 1 (7)). The Merchandise Marks (Prosecutions) Act, 1894, which relates to the undertaking by the Board of Agriculture of prosecutions under the Merchandise Marks Act, 1887, in certain cases, is to apply to the produce of any fishing industry as it applies to agricultural or horticultural produce (s. 1 (8)).

I. *Sea Fishings*.—An attempt to set a trawl-net within the prohibited area is using a mode of fishing in contravention of the Herring Fishery Acts (*Pyper*, 1901, 5 F. 514, 8 S. L. T. No. 399, 38 S. L. R. 369). By force of sec. 3 of the Act of 1890, the net is forfeited *vi statuti* when the offence is committed, and it may be seized prior to trial or conviction (*ibid.*). In the case of *Pyper*, it was held that a fishery officer, who on the instructions of the Fishery Board seized the nets of a trawler whom they had reason to suspect of having been engaged in trawling within the three-mile limit, was not liable in damages, although the trawler had not been trawling within the prohibited area. (The case of *Bell*, 3 M. 1076, was distinguished.) “Net” in sec. 3 of the Act of 1890 includes not merely the netted part of the fishing gear, but also the warp and the otter-boards (*Rankin*, 1901, 4 F. (J.) 5, 9 S. L. T. No. 188, 38 S. L. R. 5; *Pyper*, *ut supra*). It is illegal, by the Herring Fishery Act, 1889, s. 8, for a foreigner to land at a port in Scotland any fish caught by him in contravention of the Statute, although the Statute be not binding on him (per Lord Kyllachy, in *Poll*, 1898 (O. H.), 1 F. 826, 5 S. L. T. No. 219, 35 S. L. R. 637).

*Mussels*.—Mussel scalps on the foreshore, and in the bed of the estuary

of a public navigable river, belong to the Crown in property, and not in trust for the public (*Parker*, 1902, 4 F. 698).

[*Correction.*—Vol. VI, p. 15, line 39, for “any person who shall sell or,” read “any person who shall buy, sell, or.”]

**II. Fresh-water Fish—Explosives.**—The Fresh-water Fish (Scotland) Act, 1902 (2 Edw. vii. c. 29, s. 3), provides that, any person who uses or attempts to use dynamite or other explosive to catch or destroy fish in any river, water, or loch in Scotland, shall be liable to the like penalties and to the like jurisdiction as if he had committed an offence under the Fisheries (Dynamite) Act, 1877 (40 & 41 Vict. c. 65).

**Trout.**—The said Fresh-water Fish Act, 1902, introduces a close time for trout. The close time extends from the 15th October till 28th February, both inclusive, during which time it is not lawful to—(a) fish for or take common trout (*salmo fario*) in any river, water, or loch in Scotland, by net, rod, line, or otherwise; or (b) have possession of common trout; or (c) expose common trout for sale. Any person who shall so fish for or take or possess or expose for sale such trout at any time within the said dates shall forfeit and pay a sum not exceeding five pounds for every such offence (s. 1).

The above provision does not apply to the owner, occupier, or lessee of any water where trout are kept in captivity or artificially reared and fed, or to any person employed by them for the rearing or feeding of trout, or to any person to whom such trout may be consigned by them for sale or otherwise for the purpose of stocking ponds, rivers, or other waters. But any such owner, lessee, occupier, or person who shall, during the close time created by the Act,—“(a) take from such water common trout, except for scientific or breeding purposes, or for the purpose of such trout being removed in a living state to other rivers, waters, or lochs; (b) sell or expose for sale dead common trout: or (c) sell or expose for sale live common trout for the purposes of food, shall, on conviction, be deemed to have committed an offence under the section (s. 1).

All persons, being the proprietors of any land through or by which any river or water flows, or on which any loch is wholly or partially situated, or having a right to fish there for trout, or having a written permission from some such proprietors or persons entitled to fish as aforesaid, shall be subject to the penal and other provisions of the Act of the twenty-third and twenty-fourth years of Victoria, chapter forty-five, in respect of fishing for trout by net (except in ponds or lochs all the proprietors of which have agreed to permit such fishing), or by what is known as double rod fishing, or cross line fishing, or set lines, or otter fishing, or burning the water, or by striking the fish with any instrument, or by pointing, or by putting into the water lime or any other substance destructive to trout, with intent to destroy the same; and the exceptions in the said Act of such proprietors and others from the penal and other provisions directed against the practices aforesaid are hereby repealed: Provided that it shall still be legal and permissible for such proprietors and others to fish for trout by net in such rivers, waters, or lochs, where such fishing is prosecuted for scientific, breeding, or restocking purposes (s. 2).

It is illegal to fish for salmon in the river Tay with (1) “drift or hang” nets, or with (2) “toot and haul” nets (*Duke of Atholl v. Grovers’ Incorporation of Perth: Duke of Atholl v. Wedderburn*, 1900 (H. L.), 2 F. 57, 8 S. L. T. Nos. 71, 72, 37 S. L. R. 686). Under sec. 18 of the Salmon

Fisheries Act, 1868, the offence is the being found in possession of salmon roe in any place and under any circumstances, unless the accused can prove that he was in possession of roe for purposes of artificial propagation or scientific inquiry; and it is not necessary to libel the purpose for which the accused was in possession of the roe (*Crook*, 1899 (J.), 2 Ad. 658, 1 F. 50, 6 S. L. T. No. 367, 36 S. L. R. 322). As to the joint rights of proprietors of trout fishing in a loch, see *Menzies*, 1901, 9 S. L. T. No. 91, 38 S. L. T. 672.

**Fixtures** (VI. 26).—*Machinery*.—The Lands Valuation (Scotland) Amendment Act, 1902 (2 Edw. VII. c. 25), further defines the words “machinery, fixed or attached” in sec. 42 of the Valuation Act, 1854 (17 & 18 Vict. c. 91), by providing “that in any building occupied for any trade, business, or manufacturing process, the expression ‘machinery, fixed or attached’ shall be construed as including all machinery, machines, or plant in or on the lands or heritages for producing or transmitting, first, motive power, or for heating or lighting such buildings; but, save as herein provided, shall not include machines, tools, or appliances which are only so fixed that they can be removed from their place without necessitating the removal of any part of the building.”

**Food and Drugs**.—See SALE OF FOOD AND DRUGS ACTS (XIV. *infra*).

**Franchise** (VI. 46).—The valuation roll is conclusive evidence of the clear yearly value of a house in respect of occupancy of which a vote is claimed (*Harkness*, 1899, 2 F. 268, 37 S. L. R. 187).

*Disqualification*.—A person who has been appointed honorary Sheriff-substitute of a county, is entitled to remain on the roll of parliamentary voters for the county; but it has not been decided whether he is entitled to vote (*Wright*, 1898, 1 F. 209, 6 S. L. T. No. 299, 36 S. L. R. 186).

*Service Franchise*.—A constable who resides in barracks where he has a separate room is an inhabitant occupier in sense of the Statute (*Wallace*, 1897, 24 R. 382, 4 S. L. T. No. 360, 34 S. L. R. 326); but a coachman, who occupies a house over the stables, but who sleeps and takes his meals in the mansion house, is not (*Campbell*, 1895, 23 R. 118, 3 S. L. T. No. 269, 33 S. L. R. 121).

*Lodger*.—Occupation of rooms from Friday night until Monday morning every week during the year does not constitute residence entitling an applicant to a lodger’s vote, although he pays for the rooms and these lie empty for his use during the rest of the week (*Miller*, 1899, 2 F. 265, 37 S. L. T. 185). The lodgings in respect of which a lodger claims to be put upon the roll of voters for any parliamentary division of a burgh must (if the claimant occupies several different lodgings during the qualifying period) be all situated within that division (*Brown*, 1898, 1 F. 206, 6 S. L. T. No. 298, 36 S. L. R. 184). A lodger is “sole tenant” of his lodgings although his wife resides with him (*Hamilton*, 1898, 1 F. 208, 6 S. L. T. No. 300, 36 S. L. R. 186). [As to lodger franchise, see also *Ross*, 1897, 25 R. 98, 5 S. L. T. No. 286, 35 S. L. R. 98; *Kellie*, 1897, 24 R. 379, 4 S. L. T. No. 362, 34 S. L. R. 329; *Flynn*, 1899, 2 F. 269, 37 S. L. R. 187; *Hamilton*, 1897, 1 F. 208, 5 S. L. T. No. 287, 35 S. L. R. 107; *Green*, 1901, 4 F. 245, 39 S. L. R. 186.]

**Friendly Societies.**—See also CLUBS (XIV. *supra*). *Borrowing*.—The Societies' Borrowing Powers Act, 1898 (61 & 62 Vict. c. 15), gives power to a "society" to provide by rule that it may receive deposits and borrow money at interest from its members, or from other persons. The rule on being registered is valid. "Society" means a specially authorised society registered, or seeking registration, under the Friendly Societies Act, 1896, having for its object the creation of funds to be lent out to the members of the society or for their benefit, and having in its rules provisions (*a*) that no part of its funds shall be divided by way of profit, bonus, dividend, or otherwise among its members; and (*b*) that all money lent to members shall be applied to such purpose as the society or its committee of management may approve.

**Funeral Expenses** (VI. 98).—Under the Cremation Act, 1902 (2 Edw. VII. c. 8, s. 9), the charges and fees paid to the burial authority for the burning of human remains in a crematorium, and any other expenses properly incurred in or in connection with the cremation of a deceased person, are to be deemed to be part of the funeral expenses of the deceased.

**Game Laws** (VI. 103).—[See also J. H. Tait, *The Game Laws, Trout and Salmon Fishing*, 1901.]

**Gaming and Betting** (VI. 106).—Neither the Gaming Act, 1845, nor the Gaming Act, 1892, applies to Scotland (*Levy*, 1903, 11 S. L. T. p. 268).

**Glebe** (VI. 123).—See ECCLESIASTICAL ASSESSMENTS (XIV. *supra*).

**Goodwill** (VI. 126).—"I do not think it is settled as an abstract proposition that the goodwill of a public-house is wholly heritable. I think its character may depend on circumstances" (per Lord Kincairney, *Leishman*, 1899, 6 S. L. T. No. 406; cf. *Town and County Bank*, 1902, 9 S. L. T. No. 408). Where a person has sold the goodwill of a business, he is not entitled thereafter to canvass former customers in the interests of a business of a similar kind (*Dumbarton Steamboat Company*, 1899, 1 F. 993, 7 S. L. T. No. 106, 36 S. L. R. 771).

**Gun Licence.**—Rabbits are not vermin within the meaning of sec. 7 of the Gun Licence Act (*Lord-Adv. v. Young*, 1898, 25 R. 778, 5 S. L. T. No. 464, 35 S. L. R. 589).

**Hawking.**—See HUNTING AND HAWKING (XIV. *infra*).

**Heritable and Moveable** (VI. 180).—The goodwill of a public-house is not necessarily wholly heritable. Its character may depend on circumstances (Lord Kincairney in *Leishman*, 1899, 6 S. L. T. No. 406).

**Heritors** (VI. 195).—A corporation which have an exclusive and perpetual right of wayleave for a track of water-pipes through lands situate in a parish, are heritors in the parish and liable to assessment for the upkeep of the church and manse. The assessment is to be calculated on the real rental appearing in the valuation roll (*Strathblane Heritors*, 1899, 1 F. 523, 36 S. L. R. 437). A kirk-session is entitled to lay an assessment on a seat-holder in respect of seats which are not let; and the Statute 33 & 34 Vict. c. 87, s. 29, does not confine them to forfeiture for the enforcement of their power of assessment (*Montrose Kirk-Session*, 1898 (O. H.), 6 S. L. T. No. 125). See also ECCLESIASTICAL ASSESSMENTS (XIV. *supra*).

[Duncan, *Parochial Ecclesiastical Law*, 3rd ed. (by C. N. Johnston, K.C.), 1902.]

**Hiring** (VI. 199).—*Locatio Operis: Duration of Contract.*—An employer, bound by contract to give three months' notice to his servant, cannot terminate the contract by giving up the business in which the servant is engaged (*Wilson*, 1900 (O. H.), 8 S. L. T. No. 10). A winding-up order or a resolution to wind up constitutes notice of discharge to all the servants of a company in liquidation (*Chapman*, 1866, L. R. 1 Eq. 346). The effect is that this “entitles the servants to damages as for wrongful dismissal” on the day on which the liquidation commences (*Lindley, Companies Acts*, 730). They are free to leave the service at once and to claim damages, on which they will only receive the same dividend as other creditors, because the Preferential Payments Act, 1888, does not cover such a case. Where, however, the liquidators have continued to carry on the business of the company for a time, and employees have continued in the service until the concern is sold, the employees are entitled to notice in accordance with their original agreement, or to wages appropriate to the duration of the stipulated notice (*Day*, 1900 (O. H.), 8 S. L. T. No. 30).

**Housing of the Working Classes** (VI. 235).—The Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44), empowers local authorities to advance money to a resident in any house within their area for the purpose of enabling him to acquire the ownership of that house. The advance is not to exceed four-fifths of what, in the opinion of the local authority, is the market value of the ownership, nor £240, or, in the case of a fee-simple or leasehold, of not less than ninety-nine years unexpired at the date of purchase, £300. An advance is not to be made where the market value of the house exceeds £400. An advance is to be repaid, with interest, within such period not exceeding thirty years as may be agreed upon (s. 1). In Scotland the local authority for the purpose of the Act is, (a) in counties including the burghs (as defined by the Burgh Police Act, 1892) situated therein and having a population of less than seven thousand according to the census last taken, the county council; and (b) in other burghs, the town council or commissioners of the burgh (s. 12).

**Hunting and Hawking.**—The Act 1621, c. 31, is not in desuetude (see *Trotter*, 8 July 1809, F. C.; *Oliphant and Others* (Sheriff Court of Perthshire), 10 S. L. T. No. 360, and authorities there cited). The Statute enacts that no man can hunt or hawk hereafter who hath not a plough

of land in heritage, under a penalty of £100, the one-half to the King, the other half to the informer (see Kames, *Abridgement*, 125; Barclay's *Digest* (Chisholm), p. 330).

**Immoral Traffic (Scotland) Act, 1902** (2 Elw. vii. c. 11).—This short Act has been passed to make provision for the punishment of persons trading in prostitution in Scotland. Every male person who knowingly lives wholly or in part on the earnings of prostitution, or in any public place persistently solicits or importunes for immoral purposes, is liable, on conviction before a summary Court, to be imprisoned for any term not exceeding three months with hard labour. Where a male person is proved to live with or to be habitually in the company of a prostitute, and has no visible means of subsistence, he shall, unless he can satisfy the Court to the contrary, be deemed to be knowingly living on the earnings of prostitution. If it is made to appear to a Court of summary jurisdiction by information on oath that there is reason to suspect that any house or any part of a house is used by a female for purposes of prostitution, and that any male person residing in or frequenting the house is living wholly or in part on the earnings of the prostitute, the Court may issue a warrant authorising any constable to enter and search the house and to arrest that male person. See also DISORDERLY HOUSE (IV. 251); CRIMINAL LAW AMENDMENT ACT (III. 376).

**Imprisonment (In Default of Payment of Fines).**—The Fine or Imprisonment Act, 1899 (62 & 63 Vict. c. 11), assimilates the law of Scotland to that of England as to imprisonment in default of payment of fines. “Where a person is committed to prison for non-payment of a sum adjudged to be paid by the conviction of any Court of summary jurisdiction, then, on payment to the governor of the prison, under conditions prescribed by prison rules, of any sum in part satisfaction of the sum so adjudged to be paid, and of any charges for which the prisoner is liable, the term of imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which the prisoner is sentenced as the sum so paid bears to the sum for which he is so liable” (s. 1).

**Improvement of Lands Act, 1899.**—This Act (62 & 63 Vict. c. 46) extends to Scotland so much of the following enactments as make additions to the improvements authorised by sec. 9 of the principal Act (27 & 28 Vict. c. 114), viz. Limited Owners' Residences Acts, 1870, 1871; Limited Owners' Reservoirs and Water Supply Further Facilities Act, 1877; Settled Land Acts, 1882, 1890; and Housing of the Working Classes Act, 1890.

**Income Tax** (VI. 261).—If a person fails to make a “true and correct statement,” as required by sec. 52 of the Act of 1842, he is liable in a penalty, as imposed by sec. 55 of that Act (*Suivers*, 1897, 25 R. 242, 5 S. L. T. No. 279, 35 S. L. R. 190). It is competent for the revenue authorities to prosecute in the High Court in such a case without having first taken proceedings against him before the Income Tax Commissioners

(*ibid.*). Where the interest on money invested in the Colonies is not brought home, but reinvested there, it is not constructively remitted so as to be chargeable with income tax by being entered in the owner's accounts (*Scottish Provident Institution*, 1895, 23 R. 322, 3 S. L. T. No. 349, 33 S. L. R. 228; *Standard Life Assurance Co.*, 1901, 9 S. L. T. No. 59; cp. *Scottish Provident Institution*, 1903 (H. L.), 11 S. L. T. p. 2).

**Inebriates.**—See HABITUAL DRUNKARDS (XIV. *supra*).

**International Private Law** (VII. 43).—An alien is allowed by custom to sue in British Courts actions against private individuals; but he cannot sue the State, or the Head of the State. It is within the prerogative of the Crown arbitrarily to exclude foreigners from its territory. If a foreigner so excluded thinks himself wronged, he must seek redress through the channels of diplomacy; he cannot appeal to the municipal Courts against the Crown's prerogative (*Poll*, 1898 (O. H.), 1 F. 823, 5 S. L. T. No. 219, 35 S. L. R. 637).

**Intoxicating Liquors (Sale to Children).**—The Intoxicating Liquors (Sale to Children) Act, 1901 (1 Edw. vii. c. 27), makes it illegal to sell liquors to children. Sec. 2 enacts that “Every holder of a licence who knowingly sells or delivers, or allows any person to sell or deliver, save at the residence or working place of the purchaser, any description of intoxicating liquor to any person under the age of fourteen years for consumption by any person on or off the premises, excepting such intoxicating liquors as are sold or delivered in corked and sealed vessels in quantities not less than one reputed pint for consumption off the premises only, shall be liable to a penalty not exceeding forty shillings for the first offence, and not exceeding five pounds for any subsequent offence; and every person who knowingly sends any person under the age of fourteen years to any place where intoxicating liquors are sold, or delivered, or distributed, for the purpose of obtaining any description of intoxicating liquor, excepting as aforesaid, for consumption by any person on or off the premises, shall be liable to like penalties.” The expression “corked” means closed with a plug or stopper, whether it is made of cork, wood, glass, or other material; “sealed” means secured with any substance without the destruction of which the cork, plug, or stopper cannot be withdrawn (s. 5). There is a saving for the employment by licensees of any member of their family, servant, or apprentice to deliver intoxicating liquors (s. 3). For the purpose of all legal proceedings under the Act, the Act is to be construed as one with the Licensing (Scotland) Acts (s. 4).

**Joint Stock Companies** (VII. 97).—Since the publication of the article in Volume VII., two statutes have been passed relating to joint stock companies, by the later of which (the Companies Act, 1900, 63 & 64 Vict. c. 48) important alterations on the law were introduced.

The Companies Act, 1898 (61 & 62 Vict. c. 26), empowered the Court to grant relief for non-compliance with sec. 25 of the Act of 1867, which related to the filing of a contract in writing where shares have been issued for a consideration other than cash (see also *Braid Hills Hotel Co.*, 1902,

4 F. 838, 10 S. L. T. No. 42, 39 S. L. R. 607; *Ferguson*, 1901, 4 F. 64, 9 S. L. T. No. 184, 39 S. L. R. 39; *Waddie & Co.*, 1900, 38 S. L. R. 212). Sec. 25 of the Act of 1867 has been repealed by the Act of 1900 (s. 33 and Scheld.).

The Companies Act, 1900, enacts the following alterations on the previous law:—

The *certificate of incorporation* is now *conclusive evidence* that all the requisitions of the Acts in respect of registration have been complied with, and that the association is a company authorised to be registered and duly registered under the Acts (s. 1 (1)). The manner in which such certificate may in future be obtained is set forth in the same section. The incorporation is to take effect from the date of incorporation mentioned in the certificate (s. 1 (3)).

Restrictions on the *appointment or advertisement of directors* are imposed by sec. 2. A person cannot be appointed director of a company by the articles of association, or be named as a director or proposed director in any prospectus issued by or on behalf of the company, unless before the registration of the articles or the publication of the prospectus he has by himself, or by his agent authorised in writing—(1) signed and filed with the registrar a consent in writing to act as director, and (2) either signed the memorandum for a number of shares not less than his qualification (if any), or signed and filed with the registrar a contract in writing to take and pay for his qualification shares (if any). On the application for registration of the memorandum and articles, the applicant must deliver to the registrar a list of those who have consented to be directors; and if this list contains the name of anyone who has not so consented, the applicant is liable to a fine not exceeding £50. Sec. 2 does not apply (1) to a company registered before the commencement of the Act, (2) to a company which does not issue any invitation to the public to subscribe for its shares, or (3) to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which it is entitled to commence business. Where a qualification is required, a director must qualify within two months after his appointment, or such *shorter* time as may be fixed by the regulations of the company; otherwise the office is vacated, and the person is incapable of being reappointed until he has qualified; and, if such unqualified person still acts, he is liable to pay to the company a sum of £5 for every day during which he so acts (s. 3).

*Allotment*.—Restrictions are imposed on the allotment of shares to the public where sufficient capital has not been subscribed (ss. 4 and 5). No allotment is to be made unless the following conditions have been complied with:—(a) The amount (if any) fixed by the memorandum or articles of association and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or (b) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription, has been paid to and received by the company. The amount so fixed and named and the whole amount aforesaid is to be reckoned exclusively of any amount payable otherwise than in cash. The amount payable on application on each share is not to be less than five per cent. of the nominal amount of the share. If these conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares is to be forthwith repaid to the applicants without interest, and if any such money

is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company are jointly and severally liable to repay that money with interest at the rate of five per cent. from the expiration of the forty-eight days; but a director is not liable if he proves that the loss of the money was not due to any misconduct or negligence on his part. Any condition requiring or binding any applicant for shares to waive compliance with any requirement of the section is void. The section, except the provision as to the proportion payable on application, does not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription (s. 4). An allotment in contravention of these provisions is voidable, at the instance of the applicant, within one month after the holding of the statutory meeting, and it is voidable although the company is being wound up (s. 5). A director who knowingly contravenes or permits or authorises the contravention of any of these provisions as to allotment is liable (on proceedings brought within two years) to compensate the company and the allottee for loss or costs (s. 5 (2)). Sec. 6 imposes restrictions on the commencement of business. A return of allotments is to be filed with the registrar within one month after any allotment, by sec. 7, which takes the place of sec. 25 of the Act of 1867, now repealed. There are to be filed—(a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and (b) in the case of shares allotted in whole or in part for a consideration other than cash, a contract in writing constituting the title of the allottee to such allotment, together with any contract of sale, or for services or other consideration in respect of which such allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted. A penalty is imposed for failure to comply with this section.

*Commissions for underwriting and placing shares* are legalised if the payment of the commission and the rate of it are authorised by the articles and disclosed in the prospectus (s. 8).

*Prospectus*.—Sec. 38 of the Act of 1867 is repealed (s. 33 and Sched.). Every prospectus issued by or on behalf of a company, or in relation to any intended company, must be dated, and that date, unless the contrary is proved, is to be taken as the date of the publication of the prospectus (s. 9 (1)). A copy must be signed by every person named therein as a director or proposed director, or by his agent authorised in writing, and must be filed with the registrar on or before the date of its publication. A prospectus cannot be registered until it is so dated and signed; it cannot be issued until it is filed for registration, and it must state "on the face of it" that it has been filed (s. 9 (2) (3)). The statements required in a prospectus are specified in sec. 10. Prior to the statutory meeting a company may not vary the terms of any contract referred to in the prospectus, except subject to the approval of the statutory meeting.

*Statutory Meeting*.—Sec. 39 of the Act of 1867 is repealed (s. 33 and Sched.). Every *company limited by shares* and registered after 1st January 1901 must, within a period of not less than one month nor more than three months from the date at which it is entitled to commence business, hold a general meeting of the members, to be called "the statutory meeting" (s. 12 (1)). At least seven days before the date of meeting, the directors must forward to every member a report certified by not fewer than two

directors (or where there are not two, by the sole director and manager), stating the total number of shares allotted, and the other particulars detailed in sec. 12; and this report must be filed with the registrar. The procedure as to resolutions, adjournments, etc., at the meeting is regulated by sec. 12. Provision is made for the holding of an *extraordinary general meeting* on requisition of holders of not less than one-tenth of the issued capital (s. 13).

*Mortgages and charges* are regulated by secs. 14–18.

The *annual summary* required by sec. 26 of the Act of 1862 to be sent to the registrar is now to be fuller, and must be signed by the manager or secretary (s. 19). Secs. 45 and 46 of the Act of 1862 (requiring a company to keep at its office a register of the names, addresses, and occupations of its directors and managers, to send a copy thereof to the registrar, and to notify changes) are applied to companies having a capital divided into shares (s. 20).

The appointment (s. 21), remuneration (s. 22), and rights and duties of *auditors* (s. 23) are regulated, in the manner at present laid down in the articles of association of most companies.

*Winding-up*.—The provisions of sec. 2 of the Joint Stock Companies' Arrangement Act, 1870, are extended to *members*; members of a company in course of being wound up are now to have the powers conferred on creditors by that Act (s. 24); and in a voluntary winding-up a creditor of the company has the power, under sec. 138 of the Act of 1862, formerly possessed only by the liquidator and the contributors, of applying to the Court to determine any question arising in the liquidation (s. 25).

*Defunct Companies*.—Power is given to the registrar to strike the name of a company in course of liquidation off the register if it appears to be defunct (s. 26). (As to case of restoration by Court of a company so struck off, see *Healy*, 1903, 5 F. 644, 10 S. L. T. No. 437, 40 S. L. R. 454.)

*Companies Limited by Guarantee*.—A company limited by guarantee cannot have a capital divided into shares unless the memorandum of association so provides and specifies the amount of its capital (subject to increase or reduction in accordance with the Companies Acts) and the number of shares into which the capital is divided. Every provision in any memorandum or articles of association or resolution of a company (whether limited by guarantee or otherwise) purporting to divide the undertaking of the company into shares or interests is to be treated, for the purposes of this provision, as a provision for a capital divided into shares, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby. In the case of a company limited by guarantee and not having a capital divided into shares, every provision in the memorandum or articles of association or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, is void. These provisions apply only to companies registered after the commencement of the Act (s. 27). Sec. 28 imposes a penalty for *false statements* wilfully made in any return, report, certificate, balance-sheet, or other document required by or for the purposes of the Act.

*Conversion of Stock into Shares*.—A company limited by shares, and which has in pursuance of the Companies Act, 1862, converted any portion of its shares into stock, may so far modify the conditions in its memorandum of association, if authorised to do so by its articles as originally framed, or as altered by special resolution in manner provided in the

Companies Act, 1862, as to reconvert such stock into paid-up shares of any denomination.

[M'Neil, *Manual of Law of Joint Stock Companies in Scotland*, 1901.]

**Judicial Factor** (VII. 173).—*Curator bonis to Incapax*.—The Court will appoint a *curator bonis* to a person of unsound mind, although he have, while capable, granted a factory and commission for the management of his affairs (*Dick*, 1901 (O. H.), 9 S. L. T. No. 146). The Court will not appoint as *curator bonis* to an incapax a person resident in England, even if he offer to prorogate the jurisdiction of the Scottish Courts, and find cautioners in Scotland (*Napier*, 1902 (O. H.), 9 S. L. T. No. 375). Where objections were lodged to a petition for recall of a curatory, and the petition was accompanied by the certificates of two medical men that the ward was of sound mind, the Court remitted to one of the Commissioners in Lunacy to examine and report (*Fraser*, 1901 (O. H.), 9 S. L. T. No. 232).

Where an English railway company refused to recognise the authority of a *curator bonis* to sell stock of the company belonging to his ward, without express authority of the Court, the Court on petition granted the authority, although the Accountant of Court considered that express power was unnecessary (*McCall's Curator*, 1901 (O. H.), 8 S. L. T. No. 350).

**Judicial Separation** (VII. 215).—A false charge of criminal immorality, if made by one spouse against another and persisted in, is cruelty and a good ground for decree of separation and aliment, where it results in injury or in reasonable apprehension of injury to the bodily or mental health of the person accused (*Aitchison*, 1902 (O. H.), 10 S. L. T. No. 219). Evidence of acts of cruelty which have been condoned is good evidence to colour later acts, which, although harsh, would not in themselves ground an action of separation and aliment (*Smeaton*, 1900, 2 F. 837, 7 S. L. T. No. 448, 37 S. L. R. 595). Habitual drunkenness is cruelty (3 Edw. VII. c. 25, s. 73).

**Jurisdiction** (VII. 218).—*Arrestments* do not confer on the Courts jurisdiction to entertain declaratory conclusions (*Williams*, 1897 (O. H.), 5 S. L. T. No. 275); but jurisdiction founded by arrestment extends to the pronouncement of decrees *ad factum praestandum* (*Powell*, 1900 (O. H.), 8 S. L. T. No. 152).

The statutory exclusion of the jurisdiction of the Court of Session in cases having a value of less than £25, is not radical or absolute. It is competent to raise in the Court of Session an action concluding for less than £25 against a foreigner where the sole ground of jurisdiction over him is that he possesses heritable property in Scotland (*Strachan*, 1901 (O. H.), 8 S. L. T. No. 298, per Lord Stormonth Darling; Erskine, i. 2. 8; *M'Bey*, 1879, 7 R. 255).

The representatives of Englishmen who have been trustees in a Scottish trust are subject to the jurisdiction of the Scottish Courts in an action of accounting raised against them by a judicial factor on the trust estate (*Rintoul*, 1898 (O. H.), 5 S. L. T. No. 382). Where trustees acting under an English trust hold heritable property in Scotland, the Scottish Court has jurisdiction over them, as individuals, to consider questions rising out of trust administration (*Mackay*, 1897 (O. H.), 4 S. L. T. No. 466).

**Jury : Jury Trial** (VII. 232).—The fact that a jurymen was one of 19,060 employees of the defenders was held no sufficient ground for allowing the pursuer a new trial where his employment had no connection with the subject-matter of the litigation, and the parties were agreed that the verdict was just (*Watson*, 1901, 3 F. 342, 8 S. L. T. No. 275, 38 S. L. T. p. 252).

*Trial on Record*, without issues.—See also *M'Laughlan*, 1901, 9 S. L. T. No. 282).

Where, in an action for slander, there was difficulty in adjusting the terms of a counter-issue, so that it should exactly meet the issue, the Court remitted to one of their number to take proof (*M'Quillan*, 1902, 9 S. L. T. No. 322).

*New Trial*.—A third trial refused (*Grant*, 1903, 5 F. 459, 10 S. L. T. No. 458, 40 S. L. R. 365; *M'Quillan*, 1902, 4 F. 462, 9 S. L. T. No. 344, 40 S. L. R. 328).

**Jus Relictæ : Jus Relicti** (VII. 257).—Where a man died leaving moveable estate, and also heritable estate, part of which was burdened by an obligation to erect buildings upon the subjects, it was held that the performance of this burden must be borne by the moveable estate before the *jus reliecte* could be claimed (*Ross's Trs.*, 1901 (O. H.), 9 S. L. T. No. 286). A husband may defeat his wife's claim to *jus relictæ* by giving away his whole estate during life (*Allan*, 1901 (O. H.), 8 S. L. T. No. 370). Where a husband was not a party to the deed, and took no benefit under it, it was held that he was not disentitled to claim *jus relicti* out of the estate of his deceased wife because she had conveyed her whole estate to trustees by an antenuptial trust-deed, reserving to herself power of disposal (*Lyon's Trs.*, 1903, 11 S. L. T. p. 211, 40 S. L. R. 774). As to the effect of change of domicile on a right to *jus relictor*, the case of *Manderson* (1899, 1 F. 621, 36 S. L. R. 432) is instructive. There a domiciled Scotsman married in 1873, and continued in Scotland until 1889, when he went to the Isle of Man, and there acquired a new domicile. From 1880 until 1895 he lived in adultery with A. B. In 1898 his wife raised in the Scottish Courts an action of divorce and obtained decree—the Court sustaining its jurisdiction on the ground that, cause of action having arisen while the defender was still in Scotland, he could not deprive his wife of her remedy by changing his domicile. Thereafter the wife raised in the Court of Session an action for terce and *jus relictor*. Her claim for terce over heritage in Scotland was admitted; but the claim for *jus relictæ* was disputed, on the ground that the succession of the defender fell to be regulated by the laws of the Isle of Man (where he was domiciled), and that these did not recognise *jus relictor*. The Court found that the pursuer was entitled to *jus reliecte*; apparently on the ground that, having sustained the jurisdiction by pronouncing decree of divorce, it was thereby implied that his domicile for the purposes of the divorce action was Scottish, and that therefore his succession as at the date of the divorce fell to be regulated by the law of Scotland. (Lord Young thought the *forum* not convenient, and dissented.)

**Justice of the Peace** (VII. 263).—An *ex officio* justice of the peace in Scotland, who has been re-elected to the office in respect of which he became a justice on the expiration or other determination of a previous

term of office, and who has taken the oaths required by law, may continue to act as a justice without again taking such oaths (61 & 62 Vict. c. 20, s. 1).

**Justiciary, Circuit Clerks of.**—See CIRCUIT CLERKS OF JUSTICIARY (XIV. *supra*).

**Juvenile Offenders.**—See YOUTHFUL OFFENDERS (XIV. *infra*).

**Law Agent** (VII. 307).—*Women* cannot under the existing statutes practise as law agents in Scotland (*Hull*, 1901, 1 F. 1059, 9 S. L. T. No. 130, 38 S. L. R. 776). The title of a person who is not a law agent or a member of any Law Agents' Society to petition for removal of a law agent's name from the roll, was discussed by the judges in *A. B. petitioner* (1899, 2 F. 67, 7 S. L. T. No. 200, 37 S. L. R. 52). When a relevant petition is put forward by a private person having a title, the first step is to intimate the petition to the professional body of which the respondent is a member (*ibid.*).

**Legitim** (VIII. 27).—*Collation*.—The plea of collation *inter liberos*, in answer to a claim for legitim, can only be maintained by a party entitled to share in the legitim; not, e.g., by trustees representing the interest of the residuary legatee (*Collins*, 1898 (O. H.), 5 S. L. T. No. 330, 33 S. L. R. 641, where the authorities are marshalled by Lord Stormonth Darling). An eldest son, who had sold part of the heritable estates of his deceased father, was held barred from claiming a share in the legitim fund, as he had made it impossible for himself to collate (*M'Call's Trs.*, 1901, 3 F. 1065, 38 S. L. R. 778).

**Libraries, Public** (VIII. 44).—Where the Public Libraries Consolidation Act, 1887, has been adopted for any two or more neighbouring burghs or parishes, the magistrates or councils or boards of each such burgh or parish may, by agreement, combine for any period in carrying the Act into execution (Public Libraries Act, 1899, 62 & 63 Vict. c. 5, s. 1). The expenses are to be defrayed by such burgh or parish in such proportions as may be provided by the agreement (*ibid.*). In case of such agreement to combine, the committee to be appointed in pursuance of the Act of 1887 is to be appointed by each burgh or parish in the proportion provided by the agreement (*ibid.*, s. 2).

**Licensing (Scotland) Acts** (VIII. 50).—The law relating to licensing in Scotland, as stated in Volume VIII., has been consolidated, and in several important matters amended, by the Licensing (Scotland) Act, 1903 (3 Edw. vii. c. 25). The most important alterations of the law are in relation to the constitution of Licensing and Appeal Courts and to the registration of clubs. The provisions in Part I. and Part II. of the statute, which respectively deal with these two subjects, are new; the other parts consolidate the existing law, but with important amendments, and the introduction of several new provisions.

*Licensing and Appeal Courts.*

*Licensing Courts.*—(1) *Burghs.*—For each burgh being a county of a city, and for each royal, parliamentary, or police burgh containing a population of or exceeding 7000, and for each burgh containing a population under 7000, but of or exceeding 4000, the magistrates of which have power to grant certificates under the existing Acts, there is a separate Licensing Court, consisting of the magistrates of such burgh for the time being (s. 2). (2) *Counties.*—The County Council of every county are to determine in their discretion whether the county shall be divided into districts for the purposes of the Act (called licensing districts). Where these districts are not local government districts, the consent of the Secretary for Scotland is required. Burghs which have not separate Licensing Courts, as above, form part of the county and of the local government or licensing district, if any, within which they are situated. For each county, or, where a county is divided into licensing districts, for each licensing district, there is a separate Licensing Court. One-half of the members of this Court are elected by the justices of the peace for the county from their own number, and one-half by the County Council from their own number. The number of members of the Court are in accordance with this scale of population, viz.:—Population under 25,000, eight members; between 25,000 and 50,000, twelve members; between 50,000 and 100,000, fourteen members; 100,000 or over, eighteen members (s. 3 and Sched. I.). Where, however, a burgh the magistrates of which have power to grant certificates under the existing Acts forms part of a county or licensing district under the Act, the Licensing Court for the county or district is to be modified by the addition thereto of such number of members for every such burgh as the Secretary for Scotland may determine by order under his hand, so that one member at least shall be added for every such burgh, and that the number of members for each burgh shall, as nearly as may be, bear the same proportion to the number of the Court without such addition as the population of the burgh bears to that of the county or district, “excluding every such burgh” (s. 3 (4)). The added members must be magistrates of the respective burghs, and the total number of members for a burgh must not exceed the number of its magistrates (*ibid.*).

*Courts of Appeal: Burghs and Counties.*—For the purpose of hearing appeals and applications for confirmation of new certificates under the Act, a Court (called “the Court of Appeal”) is constituted, one-half of the members of which are elected by the justices of the peace from their own number, and one-half are burgh magistrates or county councillors respectively: thus—“(2) Except as hereinafter provided, the Court of Appeal from a *Burgh Licensing Court* shall be—(a) for each burgh being a county of a city, a separate Court consisting of the members of the Licensing Court and of an equal number of justices of the peace for the county of a city; and (b) for each royal, parliamentary, or police burgh (not being a county of a city) containing a population of or exceeding twenty thousand, a separate Court consisting of the members of the Licensing Court and of an equal number of justices of the peace for the county within which the burgh is situate; and (c) in each county, for all the royal, parliamentary, and police burghs situate therein containing a population of or exceeding seven thousand and under twenty thousand, one and the same Court, consisting of burgh magistrates and justices of the peace for the county as specified in the Second Schedule annexed hereto.

"(3) The Court of Appeal (a) from a *County Licensing Court*, or if the county is divided into licensing districts from the several District Licensing Courts, and (b) from any Burgh Licensing Court for a burgh situate within the county which is not specified in the immediately preceding subsection, shall for each county be one and the same Court, whereof one-half of the members shall be county councillors for the county elected as hereinafter provided, and one-half shall be justices of the peace for the county; and the number of members shall be such that the Court shall contain three more county councillors and three more justices of the peace than the County Licensing Court or the Licensing Court for the most populous licensing district within the county, as the case may be, in accordance with the Third Schedule annexed thereto" (s. 4).

The term of office of a justice of peace or county council member of a Licensing Court or Court of Appeal is three years: they are elected on the third Tuesday of December every third year from 1904 (s. 5).

The members of a County or District Licensing Court being magistrates of a burgh, and the members of a Court of Appeal from a Burgh Licensing Court being magistrates of a burgh containing a population under twenty thousand, are, where necessary, elected by the magistrates of the burgh in each case at a meeting to be summoned by the town clerk, and to be held on any day within fourteen days after the annual election of town councillors in the year one thousand nine hundred and three, and in subsequent years as vacancies occur. The provost, or in his absence the senior baillie present, is chairman of such meeting. Each magistrate being a member of a County or District Licensing Court or of a Court of Appeal from a Burgh Lieensing Court holds office so long as he remains a magistrate of the burgh (*ibid.*).

*Dates of Meetings.*—A Burgh Licensing Court meets upon the second Tuesday of April and the third Tuesday in October in each year; and a County or District Licensing Court meets on the third Tuesday in April and the last Tuesday in October in each year (s. 6). The transfer of powers and duties and the offices of clerks to Courts and the time and place of meeting are regulated by secs. 7 and 8.

The section (9) as to *disqualification* is as follows:—"No person who is a brewer, maltster, distiller, or dealer in or retailer of exciseable liquors, or who shall be in partnership with any person as a brewer, maltster, distiller, or dealer in or retailer of exciseable liquors, shall act as a member of a Licensing Court or Court of Appeal respectively in the execution of this Act; nor shall any person being a member of a Licensing Court or Court of Appeal act in the granting of any certificate when he shall be the proprietor or tenant of the house or premises for which such certificate shall be applied; and everything done by such person respectively in any case in which he is so disqualified to act shall be null and void; and every person who shall knowingly or wilfully offend in any of the premises aforesaid shall forfeit and pay the sum of fifty pounds, to be recovered before the Sheriff within six calendar months next after the offence has been committed: Provided that no grant of a new certificate confirmed under the provisions of this Act shall be liable to objection on the ground that the members of the Licensing Court or Court of Appeal which granted or confirmed the same or any of them were not qualified to make such grant or confirmation, and provided further that a member of a Licensing Court or a Court of Appeal shall not be disqualified to act for any purpose under this Act by reason only of his being interested in a railway company which is a retailer of exciseable liquor."

*Powers, Duties, and Procedure of Licensing and Appeal Courts.*

This branch is dealt with in Part II. of the Act (ss. 11–42). Certificates to sell liquor commence on the 28th May or 28th November, according as they are granted in April or October; and they continue in force until the 28th May following (s. 12). A new certificate (*i.e.* one granted in respect of any premises which are not certificated at the time of application; not certificated premises, rebuilt on destruction by fire, tempest, or other calamity, s. 107) must be confirmed by the Court of Appeal (s. 13). The right of appeal from the Licensing Court to the Court of Appeal is no longer confined to justices and to proprietors or occupiers of the premises, but extends to “*any member of a Licensing Court*” (not to all justices, as formerly), to the proprietor or occupier, and any proprietor or occupier of property in the neighbourhood of the premises who has objected before the Licensing Court to the granting or renewal of the certificate (s. 22). The right of appeal does not apply to the refusal of new certificates (s. 23). As to the *transfer of certificates*, it is provided that—(1) A Licensing Court may at any October half-yearly meeting grant to a new tenant or occupant a transfer of any certificate then subsisting for any house or premises as aforesaid; and (2) if any person holding a certificate for any house or premises as aforesaid shall die before the expiration of his certificate, or in the case of the bankruptcy, insolvency, or incapacity of the holder of such certificate occurring before the expiration of his certificate, it shall be lawful for any two or more of the members of the Licensing Court within whose jurisdiction such house and premises are situated, to grant to the executors, representatives, or donees of the person so dying, or to the trustee, judicial factor, or *curator bonis* to such holder, and who shall respectively be possessed of such house or premises, a transfer of the certificate for such house or premises to keep and continue the same as before such death, bankruptcy, insolvency, or incapacity until the next general half-yearly meeting of the Licensing Court (s. 31). A Licensing Court has power to prescribe an *hour for closing* licensed premises not earlier than ten, and not later than eleven, o'clock (s. 34, Sched. VI., No. 2). *Special permission* to keep an inn, hotel, or public-house open during particular times (in respect of a public or special entertainment) may be granted by any two members of a Licensing Court within the jurisdiction in which the premises are situated; but it is now necessary for the applicant to serve on the chief constable or superintendent of police notice of intention to apply forty-eight hours at least before so applying (s. 40).

*Excise Licences.*

These are regulated in Part III. of the Statute (ss. 43–51).

*Offences and Penalties.*

The provisions as to offences and penalties are contained in Part IV. (ss. 52–76). The subjects of the sections are these:—52. Sale to be by standard measure. 53. Penalties for breach of certificate. 54. What shall be deemed second and third offences. 55. Saving sales on order by certain officials. 56. Saving for sales at railway stations. 57. Exciseable liquors when to be deemed to have been drunk on the premises. 58. Sale of spirits to children under sixteen illegal. 59. Sale of exciseable liquors to children under fourteen illegal. 60. Sunday sales to travellers.

61. Penalty on persons falsely representing themselves to be travellers.  
 62. harbouring constables while on duty, etc.  
 63. Distribution of liquor from vans.  
 64. Collection of rates and taxes on licensed premises prohibited.  
 65. Penalties for trafficking without certificate.  
 66. Penalty for bartering or selling spirits without certificate.  
 67. Penalty for hawking exciseable liquors.  
 68. Penalty on disorderly persons refusing to quit licensed houses.  
 69. Penalty for inducing grocer to sell exciseable liquors illegally.  
 70. Penalties for drunkenness, riotous behaviour, and other offences involving drunkenness.  
 71. Power to require person convicted of drunkenness to find caution.  
 72. Prohibition of sale of exciseable liquor to persons convicted of drunkenness.  
 73. Habitual drunkenness equivalent to cruelty in consistorial action.  
 74. Penalty for procuring drink for drunken person.  
 75. Penalty on persons found in shebeens drunk or drinking.  
 76. Penalty for allowing drinking at refreshment house during hours when licensed houses closed.

*Registration of Clubs.*

The provisions regarding the registration of clubs are contained in Part V. of the Act (ss. 77-90). A register is to be kept by the Sheriff-clerk ("the registrar"), in which is entered the name of each club to which a certificate of registration is granted under the Acts. Registration does not constitute the club licensed premises, or authorise any sale of exciseable liquors therein which would otherwise be illegal (s. 77). Where a club desires a certificate of registration, the secretary must lodge with the registrar an application signed by the chairman, secretary, or authorised law-agent of the club, stating the name and object of the club, and the address of the premises; accompanied by—(1) two copies of the rules; (2) a list containing the names and addresses of the officials and committee of management or governing body, and the names of the members; and (3) a certificate (as nearly as may be in the form of Sched. X.—to the effect that the club is conducted as a *bonâ fide* club, and not mainly for the supply of exciseable liquor) signed by two justices of the peace for the county within which the premises are situate, or, if they are within a burgh, either by two justices or two magistrates, or one justice and one magistrate; and also, where the premises are not owned by the club, signed by the owner of the premises, or, if he is under a legal disability, by his legal representative—except where they are held under a lease entered into not later than Whitsunday 1903 (s. 78). Where a renewal of certificate is desired, the secretary must make application in the same form at a date not later than twenty-one days prior to the expiry of the certificate. The certificate is granted by the Sheriff. Objections may be lodged by the chief officer of police, town council, or parish council, and by "no other person or persons," on any of the grounds specified in sec. 81 (s. 79 (2)). Where there are objections, the Sheriff hears parties, and grants or refuses the application. He may award expenses (s. 79 (3) (4)). The certificate remains in force for twelve months from the date of issue (*ibid.*). In order that a club may be eligible for registration, the rules of the club must provide:—(a) That the business and affairs of the club shall be under the management of a committee or governing body elected for not less than a year by the general body of members, and subject in whole or in a specified proportion to annual re-election, and that no member of the committee or governing body and no manager or servant employed in the club shall have any personal

interest in the sale of exciseable liquors therein or in the profits arising from such sale; (b) that the committee or governing body shall hold periodical meetings; (c) that the names and addresses of persons proposed as ordinary members of the club shall be displayed on a conspicuous place in the club premises for at least a week before their election, and that an interval of not less than two weeks shall elapse between nomination and election of ordinary members; (d) that all members shall be elected by the whole body of members or by the committee or governing body, with or without specially added members; (e) that there shall be a defined subscription payable by members in advance; (f) that correct accounts and books shall be kept showing the financial affairs and intromissions of the club; (g) that a visitor shall not be supplied with exciseable liquor in the club premises unless on the invitation and in the company of a member, and that the member shall, upon the admission of such visitor to the club premises, or immediately upon his being supplied with such liquor, enter his own name and the name and address of the visitor in a book which shall be kept for the purpose, and which shall show the date of each visit; (h) that no exciseable liquors shall be sold or supplied for consumption outside the premises of the club except as hereinafter provided; (i) that no persons shall be allowed to become honorary or temporary members of the club, or be relieved of the payment of the regular entrance fee or subscription, except those possessing certain qualifications defined in the rules, and subject to conditions and regulations prescribed therein; (j) that no person under eighteen years of age shall be admitted a member of the club unless the club is one primarily devoted to some athletic purpose, and, in the latter case, that no exciseable liquors shall be sold or supplied to any person under eighteen years of age: Provided always that this section shall not apply to any lodge of Freemasons duly constituted under a charter from the Grand Lodge of Scotland, and that subsections (c), (d), and (j) of this section shall not apply to a University Students' Union which is recognised and certified as such to the registrar by the Senatus Academicus of a university (s. 80).

A search warrant to enter a club may be granted by a justice of a county or a magistrate of a burgh, if satisfied by information on oath that there is reasonable ground for supposing that any registered club is so carried on as to constitute a ground of objection to the renewal of its certificate, or that an offence under the Act has been or is being committed; or that any exciseable liquor is sold or supplied or kept for sale or supply on the premises of an unregistered club (s. 82). Penalties are imposed for supplying or keeping liquor in an unregistered club (s. 83); for supplying liquor for consumption outside the premises of a registered club (except to a member on the premises, and for his own consumption) (s. 84); for offences by officials of a registered club (s. 86); and for making an application for registration which is false in any material particular (s. 88). Power is given to the Sheriff to cancel the certificate of registration (s. 85); and the Sheriff's decision is final in dealing with an application for an original certificate, or for the renewal of a certificate, or in cancelling a certificate (s. 86).

#### *Legal Proceedings.*

Part VI. contains the provisions regarding legal proceedings under the Act (ss. 91-106).

[Dodds and Maepherson, *Handbook to Licensing Act*, 1903; Purves,

*Scottish Licensing Laws*, 2nd ed., 1903; Dewar, *Liquor Laws of Scotland*, 4th ed., 1903.]

See also INTOXICATING LIQUORS (SALE TO CHILDREN) ACT (XIV. *supra*).

**Lien** (VIII. 74).—A law agent's lien does not extend to documents which come into his hands at a time when his client has "acquired the status of notour bankruptcy" (*Jackson*, 1899 (O. H.), 6 S. L. T. No. 391; *Bell*, *Com.* ii. 89). An accountant's lien is special and founded on implied contract; it does not entitle him to retain books against a general account (*Fulwell's Sequestration*, 1901 (O. H.), 9 S. L. T. No. 21). The secretary of a company has no lien over books of the company (coming into his hands as secretary) for money due him by the company (*Barnton Hotel Co.*, 1899, 1 F. 1190, 7 S. L. T. No. 150, 36 S. L. R. 928).

**Liferent and Fee** (VIII. 112).—A liferent with power of disposal has been held equal to a fee in several recent cases (*Rattray's Trs.*, 1899, F. 510, 36 S. L. R. 338; *Young's Trs.*, 1899 (O. H.), 7 S. L. T. No. 270; *Davies*, 1898 (O. H.), 6 S. L. T. No. 33; *Thomson*, 1900 (O. H.), 8 S. L. T. No. 190; *Howe's Trs.*, 1903, 11 S. L. T. No. 232. But compare *Reid*, 1899, 1 F. 969, 36 S. L. R. 722; *Miller's Trs.*, 1896, 24 R. 114; *Peden's Trs.*, 1903, 5 F. 1014, 11 S. L. T. p. 186, 40 S. L. R. 741; *Douglas's Trs.*, 1902, 5 F. 69, 10 S. L. T. No. 216, 40 S. L. R. 103). Where a testator directed his trustees to convey a house to A., and by codicil expressed a wish that the house "left to A. should be given after his death to B." it was held that the request was addressed to the trustees, and converted A.'s original fee into a liferent, the fee going to B. (*Jamieson's Trs.*, 1899, 2 F. 258, 7 S. L. T. No. 222, 37 S. L. R. 194. See also *Miller Richard's Trs.*, 1903, 11 S. L. T. p. 114, 40 S. L. R. 663).

Periodically recurring duplcanuds of feu-duty go to the liferenter (*Montgomeryie*, 1901, 3 F. 591, 38 S. L. R. 217).

**Loan** (VIII. 126).—See also MONEY-LENDERS (XIV. *infra*).

**Lochs** (VIII. 137).—If there are more riparian proprietors than one, the entire loch belongs rateably to them all. The *solum* is considered to belong in severalty to the several proprietors, the space enclosed by lines drawn from the boundaries of each property *usque ad medium filum* being deemed appurtenant to the land of the proprietor. Rights of boating, fowling, and fishing are enjoyed over the whole face of the water by all the riparian proprietors in common. No proprietor can complain that the other proprietors do not confine themselves to their own parts of the loch; they have a right to be everywhere, and if one part of the loch affords better fishing than another, every proprietor alike is entitled to have the benefit of that advantage (per *Ld. Kinnear* in *Menzies*, 1901, 3 F. 941, 9 S. L. T. No. 91, 38 S. L. R. 672; *Bankes*, 5 R. (H. L.) 192).

**Locomotives** (VIII. 139 and 142).—See MOTOR CARS (XIV. *infra*).

**Lodging Papers and Productions** (VIII. 153).—In all defended actions, all documents, plans, maps, models, and other productions which are intended to be used or put in evidence at the proof must be lodged, according to inventory, with the clerk of Court at his office in the Register House, on or before the fourth day prior to the date appointed for the proof, notice of the lodging being at the same time sent to the agent of the opposite party. No other production can be used or put in evidence at the proof, unless by permission of the presiding judge, on cause shown to his satisfaction, and on such terms as he expresses, or otherwise as to him may seem proper (A. S., 31st May 1902). The Court allowed to be used and put in evidence at a proof a plan, the property of the Advocates' Library, which had not (nor had a copy of it) been lodged in process four days prior to the day of proof, but where notice had been given to the opposite party of the intention to use it (*Baird's Trs.*, 1903 (O. H.), 11 S. L. T. 114). Where a document essential to the proof of the defendant's case had been searched for under a diligence, could not be discovered in time for lodging four days before the proof, but was found on the eve of the proof, the Court allowed it to be put in evidence, imposing, in the circumstances, no condition as to expenses (*Campbell and Others*, 1902 (O. H.), 10 S. L. T. No. 255).

**Lunacy Board** (VIII. 169).—The Lunacy Board (Scotland) Salaries and Clerks Act, 1900 (63 & 64 Vict. c. 54), repeals so much of the Act of 1864 as relates to the salaries of the secretary and clerk of the Board; and enacts that the Board may appoint, with the approval of the Secretary for Scotland, such number of clerks as the Treasury may sanction; the secretary and clerks are to receive such salaries as the Treasury may assign; and such salaries, together with the expenses of the Board, to the amount sanctioned by the Treasury, are to be paid out of moneys provided by Parliament.

**Machinery.**—See also FIXTURES (XIV. *supra*).

**Malversation of Office.**—See COUNCILLOR OF A BURGH (XIV. *supra*).

**Mandatary (Judicial)** (VIII. 195).—Pursuer, a British soldier absent on foreign service, was not required to sist a mandatary. If a pursuer cannot find a person to be his mandatary, he may himself return to this country and prosecute his suit; but one who is absent on the public service may be unable so to return, and on that ground deserves consideration (*Graham*, 1901, 4 F. 1, 9 S. L. T. No. 162, 39 S. L. R. 3, per Ld. McLaren; Ld. Deas in *Simla Bank*, 8 M. 781). A foreigner resident in England and pursuing an action in Scotland will not be called upon to sist a mandatary so long as he remains in the United Kingdom. But if his circumstances are such that a Scottish pursuer similarly placed would be required to find caution for expenses, he may be compelled to sist a mandatary. Merely poverty is no sufficient ground for requiring a person to sist a mandatary (*Dessau*, 1897, 24 R. 976, 5 S. L. T. No. 101, 34 S. L. R. 739). A foreign litigant may sist as a mandatary a person subject to the

jurisdiction of the English Courts (*Blow*, 1903, 5 F. 444, 10 S. L. T. No. 394, 40 S. L. R. 358).

**Manse** (VIII. 202).—Where heritors were under obligation to supply the manse with water, and did so, and the manse was thereafter included in a special water supply district, the heritors were held not bound to relieve the minister of the water rate (*Smith*, 1903, 5 F. 333, 10 S. L. T. No. 390, 40 S. L. R. 303).

**Market Gardeners.**—See AGRICULTURAL HOLDINGS ACTS (XIV. *supra*).

**Merchant Shipping Act** (XI. 326, XI. 103).—See SHIPPING (XIV. *infra*).

**Military Lands Act, 1903** (VIII. 331).—The Act of 1892 has been amended by the Acts, 1897 (60 & 61 Vict. c. 6), 1900 (63 & 64 Vict. c. 56), and 1903 (3 Edw. vii. c. 47). The last-mentioned gives to the council of a county or a burgh power, at the request of one or more volunteer corps, by agreement, to hire land on behalf of the volunteer corps for military purposes, for a period of not less than twenty-one years; and power also to contribute towards the expenses incurred by another council in purchasing or hiring land for these purposes. The expenses of so hiring or contributing may be defrayed in the same manner as expenses of purchasing. Land so hired may be leased to the volunteer corps.

**Mines.**—See also CHILDREN (EMPLOYMENT OF) (XIV. *supra*); COAL MINES REGULATION ACTS (XIV. *supra*).

Prescriptive possession of coal under lands held on a barony title will give a vassal the right, not only to the coal under the lands themselves, but to coal under the sea *ex aduerso* of the lands, unless the title be a bounding title (*Wemyss*, 1899 (H. L.), 2 F. 1, 7 S. L. T. No. 184).

**Minor** (VIII. 356).—The Infants' Relief Act, 1874, does not apply to Scotland (per Ld. Pearson in *Whitehead*, 1903 (O. H.), 10 S. L. T. No. 373). A minor who promises, without consent of his curators, to marry, is liable in damages for a breach of the promise (*ibid.*).

**Money-Lenders.**—The Money-Lenders Act, 1900 (63 & 64 Vict. c. 51), defines a money-lender as “every person whose business is that of money-lending, or who advertises or announces himself or holds himself out in any way as carrying on that business.” It does not include a pawn-broker, any registered society within the meaning of the Friendly Societies Acts, any body corporate empowered to lend money, any person *bona fide* carrying on the business of banking or insurance, or any body corporate exempted for the time being from registration under the Act (s. 6). Money-lenders must register themselves, and carry on business in their registered

name (s. 2). Where in any proceedings under sec. 2 of the Betting and Loans (Infants) Act, 1892, it is proved that the person to whom the document was sent was an infant, the person charged is deemed to have known that the person to whom the document was sent was an infant, unless he proves that he had reasonable ground for believing the infant to be of full age (s. 5). Where proceedings are taken in any Court by a money-lender for the recovery of any money lent after the commencement of the Act, or the enforcement of any agreement or security made or taken after the commencement of the Act, in respect of money lent either before or after the commencement of the Act, and there is evidence which satisfies the Court that the interest charged in respect of the sum actually lent is excessive, or that the amounts charged for expenses, inquiries, fines, bonus, premium, renewals, or any other charges, are excessive, and that, in either case, the transaction is harsh and unconscionable, the Court may re-open the transaction, and take an account between the money-lender and the person sued, and may, notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken between them, and relieve the person sued from payment of any sum in excess of the sum adjudged by the Court to be fairly due in respect of such principal, interest, and charges, as the Court, having regard to the risk and all the circumstances, may adjudge to be reasonable; and if any such excess has been paid, or allowed in account, by the debtor, may order the creditor to repay it; and may set aside, either wholly or in part, or revise, or alter, any security given or agreement made in respect of money lent by the money-lender, and if the money-lender has parted with the security, may order him to indemnify the borrower or other person sued (s. 1 (1)).

**Monuments.**—See ANCIENT MONUMENTS (XIV. *supra*).

**Motor Cars.**—On the first introduction of motor cars into this country, the law was content to regulate them as “locomotives on highways” (see *supra*, Vol. VIII. 142). But their numbers have so greatly multiplied, and their presence has become so universal on the highways, that they have now been placed in a legal category of their own, and the term “motor car” is now one known to the law. The Motor Car Act, 1903 (3 Edw. VII. c. 36), amends the Locomotives on Highways Act, 1896. The Statute is a temporary one, continuing in force until 31st December 1906, “and no longer, unless Parliament shall otherwise determine” (s. 21). It takes measures against *reckless driving* (s. 1), requires the *registration of motor cars* (ss. 2, 5), and the *licensing of drivers* (ss. 3, 4, 5), and prescribes a maximum rate of speed (s. 9). In the Act “motor car” has the same meaning as the expression “light locomotive” has in the Act of 1896, as amended by the Act, except that for purposes of registration the term does not include a vehicle drawn by a motor car (s. 20). By the Act of 1896 a “light locomotive” is “any vehicle propelled by mechanical power if it is under three tons in weight unladen [not including water, fuel, or accumulators used for the purpose of propulsion], and is not used for the purpose of drawing more than one vehicle [such vehicle with its locomotive not to exceed in weight, unladen, four tons], and is so constructed that no smoke or visible vapour is emitted therefrom except from any temporary or accidental cause.”

1. *Registration.*—Every motor car must be registered with the council of a county, or with the council of a royal, parliamentary, or police burgh having a population of not less than 50,000. A separate number is to be assigned to every car. A mark indicating the registered number of the car and the council with which it is registered must be fixed on the car, or on a vehicle drawn by the car, or on both, in accordance with the regulations of the Secretary for Scotland made under the Act. The fee for registration is 20s., and 5s. in the case of motor cycles (ss. 2, 18). If a car is used on a public highway without being registered, or if the required mark is not fixed, or is in any way obscured or allowed to become "not easily distinguishable," the person driving the car is guilty of an offence under the Act, unless he proves that he has taken "all steps reasonably practicable" to prevent the mark being obscured or rendered not easily distinguishable. A general identification mark may, on payment of an annual fee not exceeding £3, be assigned to a manufacturer or dealer in motor cars.

2. *Licensing of Drivers.*—A person may not drive a motor car on a public highway unless he is licensed for the purpose; and a person must not employ any one to drive a motor car who is not so licensed. If any one acts in contravention of this provision, he is guilty of an offence under the Act (s. 3 (1)). The county council or burgh council (as above defined) are to grant a licence to drive a motor car to any person applying for it who resides in that county or burgh, on payment of a fee of 5s., unless the applicant is disqualified as stated below (s. 3 (2)). The licensee remains in force for twelve months from its date, and is renewable, on the same conditions (s. 3 (3)). The licence must be produced by any person driving a car, when demanded by a police constable, under a penalty on summary conviction of a fine not exceeding £5 (s. 3 (4)). Any person under the age of seventeen is disqualified for obtaining a licence (but a licence limited to driving motor cycles may be granted to any one over fourteen), and any person who holds a licence is disqualified for obtaining another licence while the first licence is in force (s. 3 (5)). *Suspension of Licence and Disqualification.*—Any Court before whom a person is convicted of an offence under the Act, or of any offence in connection with the driving of a motor car, other than a first or second offence consisting solely of exceeding any limit of speed fixed under the Act, may, if he holds a licence, suspend it for such time as the Court thinks fit, and also declare him disqualified for holding a licence for such further time as the Court thinks fit, or, if he does not hold a licence, declare him disqualified, for such time as the Court thinks fit, for holding a licence; and (if he holds a licence) must cause particulars of the conviction and of any order of the Court to be endorsed upon any licence held by him, and cause a copy of these particulars to be sent to the council by whom the licence so endorsed has been granted (s. 4 (1)). A person so disqualified may appeal against the order in the same manner as a person may appeal "who is ordered to be imprisoned without the option of a fine"—*i.e.* to the sheriff depute, the appeal being taken within seven days, and disposed of summarily (s. 19 (4), s. 4 (4)).

If any person forges or fraudulently alters or uses, or fraudulently lends or allows to be used by any other person, any mark for identifying a car or any licence, he is guilty of an offence under the Act.

3. *Reckless Driving, etc.*—If any person drives a motor car on a public highway recklessly or negligently, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition, and use of the highway, and to the amount

of the traffic which actually is at the time, or which might reasonably be expected to be, on the highway, he is guilty of an offence under the Act (s. 1). He may be apprehended, without warrant, by a police constable if he refuses to give his name and address, or produce his licence, or if the motor car does not bear the mark or marks of identification (s. 1 (2)). If a driver who commits the offence of driving recklessly refuses to give his name or address, or gives a false name or address, he is guilty of an offence under the Act; and the owner of the car must, if required, give any information within his power which may lead to the identification and apprehension of the driver, and if the owner fails to do so, he also is guilty of an offence under the Act (s. 1 (3)). *Duty to Stop in case of Accident.*—A person driving a motor car must, in any case, if any accident occurs to any person (whether on foot, on horseback, or in a vehicle), or to any horse or vehicle in charge of any person, owing to the presence of the motor car on the road, stop, and if required give his own name and address, that of the owner, and the registration mark or number of the car. If he knowingly fails to do so, he is liable, on summary conviction, for a first offence to a fine not exceeding £10; for a second offence, not exceeding £20; and for any subsequent offence to a fine not exceeding £20, or, in the Court's discretion, to a term of imprisonment not exceeding one month (s. 6). *Rate of Speed.*—A person must not under any circumstances drive a motor car on a public highway at a speed exceeding 20 miles per hour (s. 9). Within any limits or space referred to in regulations made by the Secretary for Scotland on the application of the local authority of the area (*i.e.* the road authority of any county or of any royal, parliamentary, or police burgh (s. 18)) a car must not be driven at a speed exceeding 10 miles per hour (s. 9). The penalty for a first offence is a fine not exceeding £10; for a second offence, not exceeding £20; and for any subsequent offence, not exceeding £50 (*ibid.*). A person cannot be convicted of exceeding 20 miles per hour merely on the opinion of one witness as to the rate of speed (*ibid.*).

The Secretary for Scotland may, under sec. 6 of the Act of 1896, make regulations (s. 7); and he may prohibit motor cars on *special roads* which do not exceed 16 feet in width (s. 8). Power is also given him to increase the maximum weights of 3 tons and 4 tons mentioned in the Act of 1896, as respects any class of vehicles (s. 12).

*Penalties, etc.*—A person guilty of an offence under the Act for which no special penalty is provided, is liable on summary conviction in respect of each offence to a fine not exceeding £20, or in the case of a second or subsequent conviction to a fine not exceeding £50, or in the discretion of the Court to imprisonment for a period not exceeding three months (s. 11 (1)). Any person adjudged to pay a fine exceeding 20s. may appeal to the sheriff depute, as regulated by sec. 18 (6) (7). Nothing in the Act is to affect the liability of any driver or owner by virtue of any statute or at common law (s. 15); and the Act, as also the Act of 1896, are declared to apply to persons in the public service of the Crown (s. 16).

**Municipal Elections** (VIII, 385).—*Use of Schoolrooms.*—By the Municipal Elections (Scotland) Act, 1897 (60 & 61 Vict. c. 34), sec. 6 of the Ballot Act is to apply to municipal elections in Scotland—*i.e.* the returning officer may use, free of charge, for the purpose of taking the poll, any room in a school receiving a grant out of moneys provided by Parliament, and any room the expense of maintaining which is payable

out of any local rate; but he must make good any damage done to the room, and defray any expense incurred by those having control of the room, in consequence of its being so used by the returning officer.

**Musical Copyright.**—See COPYRIGHT (XIV. *supra*; and III. 305).

**Naval Volunteer Reserve : Royal Marine Volunteers.**—The Naval Forces Act, 1903 (3 Edw. vii. c. 6), provides for the constitution of a Royal Naval Volunteer Reserve Force, and a Force of Royal Marine Volunteers.

**New Trial** (IX. 16).—See JURY TRIAL (XIV. *supra*).

**Oaths** (IX. 75).—See JUSTICE OF THE PEACE (XIV. *supra*).

**Patents** (IX. 199).—The Patents Act, 1901, extends the time within which a person who has applied for protection for an invention, etc., in any foreign state or colony must apply for a patent in this country, from seven months to *twelve months* (1 Edw. vii. c. 18, s. 1, amending 46 & 47 Vict. c. 57, s. 103 (1)).

By the Patents Act, 1902 (2 Edw. vii. c. 34), the examiner, where an application for a patent has been made and a complete specification is deposited, is required to make a further investigation for the purpose of ascertaining whether the invention claimed has been wholly or in part claimed or described in any specification (other than a provisional, not followed by a complete, specification (s. 2)) published before the date of the application, and deposited pursuant to any application for a patent made in the United Kingdom within fifty years before the date of application (s. 1). If the invention has been so claimed or described, the applicant is allowed an opportunity of amending his specification, and the amended specification is to be investigated in a similar manner (*ibid.*).

**Compulsory Licences.**—Sec. 3 amends the law relating to compulsory licences, repealing sec. 22 of the Act of 1883, and enacting that—(1) Any person interested may present a petition to the Board of Trade alleging that the reasonable requirements of the public with respect to a patented invention have not been satisfied, and praying for the grant of a compulsory licence, or, in the alternative, for the revocation of the patent; (2) The Board of Trade shall consider the petition, and if the parties do not come to an arrangement between themselves, the Board of Trade, if satisfied that a *prima facie* case has been made out, shall refer the petition to the Judicial Committee of the Privy Council, and, if the Board are not so satisfied, they may dismiss the petition; (3) Where any such petition is referred by the Board of Trade to the Judicial Committee, and it is proved to the satisfaction of the Judicial Committee that the reasonable requirements of the public with reference to the patented invention have not been satisfied, the patentee may be ordered by an Order in Council to grant licences on such terms as the said Committee may think just; or, if the Judicial Committee are of opinion that the reasonable requirements of the

public will not be satisfied by the grant of licences, the patent may be revoked by Order in Council : Provided that no order of revocation shall be made before the expiration of three years from the date of the patent, or if the patentee gives satisfactory reasons for his default ; (4) On the hearing of any petition under this section, the patentee and any person claiming an interest in the patent as exclusive licensee or otherwise, shall be made parties to the proceeding, and the law officer or such other counsel as he may appoint shall be entitled to appear and be heard ; (5) If it is proved to the satisfaction of the Judicial Committee that the patent is worked or that the patented article is manufactured exclusively or mainly outside the United Kingdom, then, unless the patentee can show that the reasonable requirements of the public have been satisfied, the petitioner shall be entitled either to an order for a compulsory licence, or, subject to the above proviso, to an order for the revocation of the patent ; (6) For the purposes of this section the reasonable requirements of the public shall not be deemed to have been satisfied if, by reason of the default of the patentee to work his patent or to manufacture the patented article in the United Kingdom to an adequate extent, or to grant licences on reasonable terms, (a) any existing industry or the establishment of any new industry is unfairly prejudiced, or (b) the demand for the patented article is not reasonably met ; (7) An Order in Council directing the grant of any licence under this section shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting a licence and made between the parties to the proceeding ; (8) His Majesty in Council may make rules of procedure and practice for regulating proceedings before the Judicial Committee under this section : and, subject thereto, such proceedings shall be regulated according to the existing procedure and practice in patent matters. Any Order in Council or any order made by the Judicial Committee under this Act may be enforced by the High Court as if it were an order of the High Court ; (9) The costs of and incidental to all proceedings under this section shall be in the discretion of the Judicial Committee, but in awarding costs on any application for the grant of a licence, the Judicial Committee may have regard to any previous request for, or offer of, a licence made either before or after the application to the Committee ; (10) For the purposes of this section, three members of the Judicial Committee shall constitute a quorum ; (11) This section shall apply to patents granted before as well as after the commencement of this Act. Where a patent belongs to two persons in common, each co-owner can work the patent by himself or his agents without the consent of the other, and without accounting to that other for the profits. The right conferred by a patent is the right to exclude all the world other than the patentees, but not the patentees themselves, from using the invention (*Downie*, 1901 (O. H.), 9 S. L. T. No. 276; *Mathers*, 1865, L. R. 1 Ch. 29; *Steers* (H. L.), [1893] A. C. 232).

**Penalties (Statutory).**—See IMPRISONMENT (XIV. *supra*).

**Pharmacy Acts** (IX. 264).—The Acts (1852–1868) are amended by 61 & 62 Vict. c. 22. Apprentices or students are eligible to be elected “Student Associates” of the Pharmaceutical Society of Great Britain (s. 2); and registered chemists and druggists (within the meaning of the Act of 1868) are eligible to be elected members of the Society (s. 3).

Instead of the provisions contained in the Royal Charter of Incorporation, new regulations are substituted regarding the retirement of Members of Council by rotation (s. 4), and provision is made for voting papers being used at elections of officers (s. 5).

See also SALE OF FOOD AND DRUGS and VETERINARY SURGEONS (XIV. *infra*).

**Pistols Act, 1903** (3 Edw. VII. c. 18).—This Statute was passed to regulate the sale and use of pistols—a pistol being any “firearm or other weapon of any description from which any shot, bullet, or other missile can be discharged, and of which the length of barrel, not including any revolving detachable or magazine breach, does not exceed nine inches” (s. 2). It is unlawful to sell by retail, or by auction, or to let on hire, a pistol to any person, unless at the time of the sale or hire the person either produces a gun or game licence then in force, or gives reasonable proof that he is a person entitled to use or carry a gun without a gun or game licence (by virtue of sec. 7 of the Gun Licence Act, 1870), or that, being a householder, he purposes to use the pistol only in his own house or the curtilage thereof, or that he is about to proceed abroad for a period of not less than six months, and produces a statement to that effect, signed by himself and a police officer (of rank not lower than that of inspector) of the district within which he resides, or by himself and a justice of the peace (s. 3). Every person who sells by retail or lets on hire a pistol must, before delivery, enter in a book to be kept (and open to the inspection of the police and Inland Revenue officers) for that purpose a description of the pistol, the date of the sale, the name and address of the purchaser or hirer, and the office from which the gun or game licence produced was issued, the date of the licence, or the circumstances exempting the purchaser or hirer from having such a licence (*ibid.*). The penalty for contravention of these provisions, or for knowingly making any false entry or statement, is a fine not exceeding £5 (*ibid.*). If any person, under the age of eighteen and not exempt from using or carrying a gun without a gun or game licence, buys, hires, uses, or carries a pistol, he is liable to a penalty not exceeding 40s.; and if any one knowingly sells or delivers a pistol to such a person, he is liable to a penalty not exceeding £5. The Court may make an order as to the forfeiture or disposal of the pistol in such a case (s. 4). Any one who knowingly sells a pistol to a person who is intoxicated or is not of sound mind is liable to a penalty not exceeding £25, or to be imprisoned with or without hard labour for a period not exceeding three months (s. 5). The provisions of the Act do not apply where an “antique pistol” is sold as a curiosity or ornament (s. 8), but “antique pistol” does not include any pistol with which ammunition is sold, or “which there is reasonable ground for believing is capable of being effectually used” (s. 2). Offences may be prosecuted, and any fine in respect thereof recovered, and any summary order under the Act made, in the manner provided by the Summary Jurisdiction (Scotland) Acts.

**Poinding** (IX. 292).—Where sheep stray upon lands, the possessor of the lands may poind the animals until he be paid one half-merk for each beast and the expenses of its keep (Winter Herding Act, 1686, c. 11). The right to retain stray sheep is limited to retention for payment of the penalties due in respect of those actually poinded. It does not entitle the

poinder to retain until payment has been made of penalties due in respect of other animals belonging to the same owner which had strayed on a previous occasion, and which had been poinded but released before payment (*Fraser*, 1899, 1 F. 487, 6 S. L. T. No. 414, 36 S. L. R. 377).

**Police** (IX. 304).—The law relating to the administration of burghs in Scotland has been further amended by the lengthy Burgh Police (Scotland) Act, 1903 (3 Edw. VII. c. 33). Part I. is General, and applies to every burgh to which the Act of 1892 applies. Part II. is Adoptive, and applies to every such burgh only if and so far as the town council resolve to adopt it, in whole or in part (s. 98). Part III. contains Miscellaneous and Supplemental provisions. Part I. provides, *inter alia*, for the preparation of a register of streets (ss. 1 *et seq.*), and makes other provisions regarding streets and sewers; further regulates procedure in and powers of the Dean of Guild Court; confers powers as to public parks (erecting pavilions, shelters, etc., providing music, etc.), as to rating and borrowing, and deals with offences and penalties (betting in streets, offences in connection with the manufacture of ice-cream, etc.). Part II. (adoptive) provides, *inter alia*, for the preparation of a supplementary Valuation Roll; lays down rules regarding the width of streets, height of houses, open spaces, etc.; requires a licence for the erection of sky-signs (s. 76) and advertising sites (s. 77); makes new provisions regarding byelaws for theatres and other places of amusement (s. 80); requires billiard rooms, bagatelle rooms, etc., to be licensed (s. 81), and ice-cream shops and aerated-water shops to be registered (s. 82); and deals with the supply of milk from diseased cows (ss. 83 *et seq.*).

See also TOWN COUNCILS (XIV. *infra*).

**Pollution of Rivers Prevention.**—See RIVER (XIV. *infra*).

**Poor: Poor Law** (IX. 323).—The law relating to the settlement and removal of the poor in Scotland was altered in certain respects by the Poor Law (Scotland) Act, 1898 (61 & 62 Vict. c. 21).

#### *Settlement* (XI. 296).

The duration of residence requisite to acquire a settlement was fixed at *three* years by the Act 1672, c. 18. In 1845 (8 & 9 Vict. c. 83) the period was increased to *five* years; but the Act of 1898 (s. 1) has again reduced it to *three* years. Where the parish councils of two or more parishes in Scotland differ as to which parish is the settlement of a poor person, but are agreed as to the facts on which such settlement depends, they may refer the case for determination by the Local Government Board, whose determination is final (s. 2).

Considerable difficulty has arisen, in the unification and alteration of parishes, from the operation of the Statutes (1889, s. 51; 1894, s. 46) in breaking up a parish into fragments, each of which is made part of some other parish, without making any provision for the adjustment of rights of settlement, either acquired or in course of maturing, in the extinguished parishes. A settlement can be acquired by residence in a portion of a parish, which portion is subsequently absorbed by another

parish, coupled with continued residence in the absorbing parish—the two periods together amounting to the statutory period. The resulting settlement is in the absorbing parish (*Edinburgh Parish Council v. Gladsmuir P. C.*, 1901, 3 F. 753, 9 S. L. T. No. 17, 38 S. L. R. 505; Lord Kinmear diss. Cp. *Edinburgh P. C. v. Lauder P. C.*, 1901 (O. H.), 8 S. L. T. No. 123, 38 S. L. R. 509; *Edinburgh P. C. v. Glasgow P. C.*, 1898, 25 R. 385; *Edinburgh P. C.* (*McGraw's case*), 1898, 5 S. L. T. No. 333). A pauper of weak mind, who has not been certified a lunatic, can acquire a residential settlement (*Kirkintilloch Parish Council*, 1901 (O. H.), 9 S. L. T. No. 349; *Edinburgh P. C. v. Whithorn*, 1903 (O. H.), 11 S. L. T. p. 12). A residential settlement in a parish can be acquired by residence in a charitable institution, situated within the parish, at the sole expense of the charity (*Kirkintilloch P. C.*, *ut supra*). An acquired settlement is lost by residence elsewhere for a period of three years continuously, although the pauper has, during the currency of the three years, been insane (*Keith P. C.*, 1901, 4 F. 76, 9 S. L. T. No. 186, 39 S. L. R. 100).

#### *Removal* (IX. 341).

By the Act of 1898 (s. 3), a right of appeal, against removal, to the Local Government Board is given to a pauper, provided he shall have resided continuously for not less than one year before the date of the application for relief in the parish in which he applies for relief. In the case of a widow, her deceased husband's residence is, if necessary, reckoned as part of her residence in conferring this right of appeal. There is a similar right of appeal against removal of a pauper to England or Ireland (s. 5). The Act of 1845, s. 77, and the Act of 1852, ss. 2, 4, which provide for the removal from Scotland to England, Ireland, or Isle of Man, of paupers becoming chargeable, have no application to the French-born wife of an Englishman (*Alston*, 1903, 5 F. 922, 11 S. L. T. p. 158, 40 S. L. R. 683).

**Prescription** (IX. 392).—*Computation of Time*.—The years of prescription are counted from midnight of the day on which the event happened up to midnight of the date which ends the period (*Simpson*, 1900, 4 F. 447). Prescription runs *de momento in momentum*, and is interrupted by the service of a summons at any time on the last day of the prescriptive period (*Simpson*, 1899 (O. H.), 6 S. L. T. No. 433). *Title*.—To create a prescriptive right, possession and enjoyment must be referable to some title, actual or presumed, sufficient to create the right. For nearly 100 years successive heirs of entail in possession of lands astriected to a mill, paid to the owner a yearly sum fixed by a predecessor as a commutation of the multures, the obligation to pay not being made a burden on the estate. The payments were made in virtue of the commutation contract. It was held that they were not made in virtue of any right which could be made good against a succeeding heir of entail. The millowner had not acquired a prescriptive right to exact the commutation payments; nor, on the other hand, was the thirlage lost by non-user during the period of the commutation payments (*Grant's Trs.*, 1903, 5 F. 868, 11 S. L. T. p. 95, 40 S. L. R. 658). Possession of land for the prescriptive period, on an *ex facie* valid title, absolutely excludes inquiry into earlier titles, although the infestment refers to these, and on examination they disclose that the infestment proceeded *a non habente potestatem*. The right is impregnable on any ground of challenge not founded upon some intrinsic

nullity or forgery (*Fraser*, 1898, 25 R. 603, 5 S. L. T. No. 415, 35 S. L. R. 471. See *Simpson*, 1900, 2 F. 447). *Measure of Right*.—Prescriptive rights are measured by the extent of use or possession. Where a riparian proprietor had, during the prescriptive period, withdrawn water from a stream by means of a lade and sluices, it was held that the quantity of water drawn off, and not the quantity which the lade was capable of abstracting, was the measure of his right (*Earl of Kintore*, 1902, 5 F. 818, 10 S. L. T. No. 312, 40 S. L. R. 210).

**Presumptions** (X. 2).—Where (by virtue of the Presumption of Life Limitation Act) a person is presumed to have died at a certain date, and was unmarried when last heard of, there is no presumption that he died married and survived by issue: the person claiming estate on the ground of his death has not to meet any such presumption (*Shepherd's Trs.*, 1902 (O. H.), 9 S. L. T. No. 410). Although the Courts have never recognised that there is any age at which a woman is to be presumed to be past child-bearing, the Court may, in considering a particular case, where no other interest can be involved except that of prospective issue, act on a presumption, *hominis et facti*, based upon what is known as possible or impossible, according to the experience of mankind; accordingly they held that a woman of seventy was past child-bearing (*De la Chanmett's Trs.*, 1902, 2 F. 745, 10 S. L. T. No. 2, 39 S. L. R. 524). In the case of a woman of fifty-seven, trustees were authorised to pay on the footing that she would have no more children (*M'Pherson's Trs.*, 1902, 4 F. 921, 10 S. L. T. No. 84, 39 S. L. R. 657). These two cases were decided by the Second Division. There have been two recent decisions of the First Division which seem to conflict with these (*Gollan's Trs.*, 1901, 3 F. 1035, 9 S. L. T. No. 102, 38 S. L. R. 762; *Beattie's Trs.*, 1898, 25 R. 765, 5 S. L. T. No. 469, 35 S. L. R. 580).

**Principal and Agent** (X. 13).—An auctioneer warrants his authority to sell. If he puts up an article by mistake, and it is afterwards reclaimed by the owner, he is liable in damages to the purchaser (*Anderson*, 1903 (O. H.), 11 S. L. T. p. 93).

**Private Legislation Procedure (Scotland) Act, 1899: Provisional Orders under the** (X. 32; X. 83).—The procedure for obtaining parliamentary powers in matters relating to Scotland has been completely recast by the Private Legislation Procedure (Scotland) Act, 1899, which came into operation on 8th August 1900 (s. 19). The leading feature of the Act is the substitution of procedure by way of provisional order for the previous procedure by way of private bill, but the new system is not completely assimilated to the provisional order system previously in existence under various Acts applicable to specified classes of public undertakings (see PROVISIONAL ORDER, *ante*, Vol. X. p. 83), for it possesses, as will be seen, certain novel characteristics of its own. The first point to be observed is that it is no longer competent to apply direct to Parliament for a private bill in any matter affecting public or private interests in Scotland, it being provided by sec. 1 of the Act that all such applications for parliamentary powers must now be initiated by the presentation of a petition to the Secretary for Scotland, praying him to

issue a provisional order in accordance with the terms of a draft order submitted to him, or with such modifications as shall be necessary. To this rule sec. 16 (3) makes an exception in the case of estate bills within the meaning of the Standing Orders of the Houses of Parliament, to which the Act is not to apply; and sec. 16 (2) further provides that the Act is not to confer upon the Secretary for Scotland power to make provisional orders "authorising and regulating the supply of electricity for lighting or other purposes." Electric lighting undertakings in Scotland can thus only be authorised by Board of Trade provisional orders under the Electric Lighting Acts. The provision quoted does not appear to render incompetent applications under the Act for power to produce or supply electric energy (see *Falkirk and District Tramways*, 1901, 1 Private Legislation (Scotland) Reports 30, 38 S. L. R. 863, and G. O. 25b); but it may be noted that applications which have been made under the Act for power to set up generating stations for the supply of electricity in bulk for all purposes have in view of this provision been directed to proceed in their subsequent stages by way of private bill, e.g., the *Fife Electric Power Company Order* and the *Scottish Central Electric Power Order*, both in 1903.

The Act provides merely the general outline of the new system of procedure, leaving the details to be regulated by means of General Orders, which the Chairman of Committees of the House of Lords and the Chairman of Ways and Means in the House of Commons (referred to throughout the Act and in this article as "the Chairmen"), acting jointly with the Secretary for Scotland, are directed by sec. 15 to make for the regulation of proceedings under the Act. These General Orders, which may be varied from time to time, require to be laid before both Houses of Parliament, and may be rescinded by resolution of either House within a month thereafter (s. 15 (3)). Provision is made by the General Orders for the incorporation with each order of such general Acts as would, if the order were a private bill, be incorporated therewith according to the ordinary practice of Parliament (s. 15 (2), G. O. 143). Copies of the General Orders issued under the Act, as amended up to December 1903, may be obtained from the agents for the sale of Government publications, at the price of one shilling. The General Orders also contain a large number of regulations applicable to special classes of undertakings, e.g., railways, tramways, water, gas, etc., which it would be out of place to detail here, but which require the careful attention of promoters of such undertakings.

The preliminary procedure prescribed by the General Orders for an application under the new Act follows closely the procedure prescribed by the Standing Orders for an application to Parliament for a private bill (see PRIVATE BILL, ante, Vol. X. p. 35). The necessary steps consist in obtaining certain consents, in giving certain notices by advertisement and service, and in making certain deposits in various public offices of plans, documents, and money. For the details of these requirements and the dates by which they must respectively be fulfilled, reference is made as regards advertisements to G. O. 3-10, as regards notices and applications to owners, lessees, and occupiers of property affected to G. O. 11-22, as regards the deposit of documents to G. O. 23-38, as regards the forms of plans, books of reference, and sections to G. O. 40-55, as regards estimates, deposit of money, and declarations to G. O. 56-61, and as regards consents in particular circumstances to G. O. 22, 62-68, 137. General Order 61 provides for the giving of additional notices and the making of additional deposits where, during the progress of a provisional order, alterations are made in the work as originally proposed in the order. The consents and deposits

required vary according as the order belongs to one or other of the two classes into which all provisional orders under the Act are classified by General Order 1. The general principle of the classification is to distinguish between orders which do and orders which do not relate to constructive undertakings, the requirements as to consents and deposits being necessarily much more elaborate in the case of the latter class of undertakings. It has been held that an order sanctioning and confirming the construction and working of a railway already constructed without parliamentary authority is a second-class order (*Lanarkshire and Dumbartonshire Railway*, 1903, 3 P. L. R. 57).

The most important distinction to be noticed between the former procedure in applications for private bills and the procedure under the new Act is that applications for provisional orders may be made at two periods in the year instead of only one, viz., in December and in April, so that promoters in Scotland have now two opportunities in the year for applying for parliamentary powers. The time and method of applying for a provisional order are prescribed by General Order 2b, the dates for lodging the petition and draft order with the Secretary for Scotland being 17th April or 17th December in each year, or within three days prior to each of these dates. The General Orders fix the dates for advertisements, notices, and deposits alternatively with a view to application being made either in April or in December. (A convenient synopsis of the principal steps of procedure under the Act, prepared by the Scottish Office, will be found printed on pp. 432, 433 of Messrs. Constable and Beveridge's treatise on *Provisional Orders* under the new Act.) Other important innovations in the preliminary procedure which have been introduced by the General Orders, consist in the optional shortening of the notices by advertisement (G. O. 3, 6); in the authorisation of deposits by registered letter or parcel post as well as by personal delivery (G. O. 23); and in the requirement that notices and advertisements must state that the subsequent procedure will be by way of provisional order unless it is otherwise decided (G. O. 3).

It may be mentioned here that with a view to facilitating the working of the Statute, a senior and a junior counsel to the Secretary for Scotland for the purposes of the Act have been appointed, with an office in Edinburgh, to whom is entrusted the duty of supervising the draft orders presented, and acting as the local representatives of the views of the Scottish Office and of the various Government departments. Conferences are arranged between these counsel and the promoters, at which the terms of the various draft orders are provisionally settled.

The promoters having duly complied with the preliminary procedure required by the General Orders, and having lodged their petition and draft order with the Secretary for Scotland, the Chairmen proceed to take the draft order into consideration along with any dissents from or objections to any of the provisions of the order which have been stated in the prescribed manner and within the prescribed time. The Chairmen then issue a report on the order to the Secretary for Scotland, which is laid before both Houses of Parliament (s. 2 (1) (3)). If the report bears that the Chairmen or either of them is "of opinion that the provisions or some provisions of the draft order do not relate wholly or mainly to Scotland, or are of such a character or magnitude, or raise any such question of policy or principle, that they ought to be dealt with by private bill and not by provisional order," the Secretary for Scotland refuses without further inquiry to issue the provisional order, so far as the same is objected to by the Chairmen or Chairman (s. 2 (2)). The order may then proceed by way of private bill, the

notices and deposits already made being held as applicable to the procedure by private bill—notice, however, being required to be given to all opponents of the promoters' intention to proceed by way of private bill (s. 2 (4)). The principles upon which the Chairmen have proceeded in exercising their discretion under this section may be best gathered from their reports upon the draft orders submitted to them since the Act has been in operation. These will be found in the official Journal of Proceedings under the Act, issued from time to time by authority of the Secretary for Scotland, and also in Tables appended to the Private Legislation Reports above mentioned, which detail the purposes of the orders applied for in each year, with the Chairmen's decisions upon them. It may be said generally that important railway orders affecting the main lines, orders involving new departures in legislative policy, orders relating to Scottish companies with large interests or a wide membership out of Scotland, and orders for the supply of electricity (see s. 16 (2)), will not in the general case be allowed to proceed by provisional order, but will be relegated to the old procedure by private bill. The Act contemplates the splitting up of orders and the allowance of procedure by provisional order with regard to part of the order only, the rest being directed to proceed by private bill, and this course has been adopted by the Chairmen in several instances.

Should the Chairmen report in favour of an order being allowed to proceed, the promoters are required to satisfy an examiner that the General Orders as to notices, deposits, etc., have been complied with (s. 3 (1)). For the purposes of the Act, the Chairmen select one or more of the examiners appointed under the Standing Orders, whose duties under the Act are analogous to those now performed under Standing Orders (s. 13). The proceedings in connection with the examinations are regulated by General Orders 69–75. Proof of compliance is established chiefly by affidavits (see G. O. 75) and production of documents, the matters to be proved being set forth in printed forms, styled "statements of proofs." Proof of compliance has been allowed to be made in the case of a simple order of the first class by means of affidavits transmitted by post, the personal attendance of the agent being dispensed with (*Stonehaven Town Hall*, 1902, 2 P. L. R. 72). The examiners have a discretion as to the time and place of the examination, which may be held in Scotland (G. O. 69). Provision is made by sec. 13 for the remuneration, and by sec. 14 for the travelling and subsistence allowances of examiners. Any person desiring to object on the ground of non-compliance with General Orders must address to the examiner, and deposit in the examiners' office, a memorial complaining of non-compliance, specifically stating the matter complained of, not later than three weeks after the lodging of the petition for the order when it relates to General Orders 3–59, and not later than three days before the day appointed by the examiner for the examination of the order with regard to further General Orders, when it relates to such Orders (G. O. 70). Notice is given of the day and place of the examination to the promoters and memorialists or their agents, and the parties are entitled to appear and be heard by themselves, their agents and witnesses, before the examiner (G. O. 70, 72). The examiner reports to the Chairmen and Secretary for Scotland whether the General Orders have or have not been complied with. In the latter event, the promoters may within seven days of the report apply to the Chairmen for dispensation with any General Order which has not been complied with, and the Chairmen's decision granting or refusing dispensation is final (G. O. 74). Dispensation may be granted conditionally, and the order cannot then

proceed until the examiner reports that the conditions attached have been satisfied (s. 3 (2)). The various points which have arisen under the Act with reference to compliance with General Orders and dispensation will be found reported in the Private Legislation Reports.

Compliance with the General Orders having been proved or dispensed with, the Secretary for Scotland proceeds to take the petition for the order into consideration, and if there is any opposition to the order he directs a local inquiry as to the propriety of assenting to the prayer of the petition, to be held by Commissioners appointed under the Act. If the order is not opposed, the Secretary for Scotland directs a local inquiry to be held only if he thinks inquiry necessary (s. 3 (1)). If the order is unopposed or the opposition has been withdrawn, the promoters appear before the Secretary for Scotland or his delegate to prove the preamble, etc. (G. O. 75a), and the Secretary for Scotland may forthwith make the order as prayed, or with such modifications as shall appear to be necessary, having regard to the recommendations of the Chairmen and of the Treasury and of such other public departments as shall be prescribed, the latter provision being designed to maintain the control of Parliament over private legislation and ensure uniformity (s. 7). If modifications are made on the order, fresh deposits are required, and the modified order is again referred to the examiners (s. 7 (1), G. O. 74). The Secretary for Scotland thereafter submits the order to Parliament in a confirming bill, and the order has no validity until confirmed by Parliament (s. 7 (2)). The confirming bill in such a case is deemed after introduction to have passed through all its stages up to and including committee, and is ordered to be considered in either House as if reported from a committee. After the confirming bill is passed in the one House, the like proceedings are taken in the second House (s. 7 (2)).

Where the order is opposed, or where inquiry is directed, although the order is unopposed, the procedure is different. An order becomes opposed by the deposit of a petition against it. The rules with reference to the preparation, signature, and presentation of petitions against orders are set forth in General Orders 77-79, and must be strictly complied with (G. O. 79). Such petitions must be addressed to the Secretary for Scotland and be signed by or on behalf of the petitioners. Twelve copies must be deposited at the office of the Secretary for Scotland, Whitehall, and copies must be sent to the promoters or their agents (G. O. 77). Provision is also made for lodging petitions in favour of an order. Opposing petitions must be lodged not later than four weeks after the petition for the order has been lodged, or, in the case of dissentients at a Wharncliffe meeting under General Orders 62-66, not later than four weeks as aforesaid, or not later than seven clear days after the Wharncliffe meeting, whichever date is later (G. O. 77). These rules as to the time of lodging opposing petitions do not apply where the petitioners complain of any matter arising during the progress of the petition before the Commissioners, or of amendments as proposed in the filled-up order (G. O. 79). The grounds of objection must be specifically stated, and the petitioners will only be heard on the grounds so stated (G. O. 78). The withdrawal of applications for and petitions against provisional orders, and also of memorials, is regulated by General Order 146 (see *Clyde Navigation Trust*, 1901, 1 P. L. R. 58, 38 S. L. R. 866; *Rothesay Tramways (Extension)*, 1902, 2 P. L. R. 30, 39 S. L. R. 880).

On an inquiry being directed by the Secretary for Scotland, the Commissioners selected for the purpose hold their sittings in public at such place in Scotland as they may determine, "with due regard to the subject-

matter of the proposed order, and to the locality to which its provisions relate" (s. 6) (see *Aberdeen Suburban Tramways*, 1902, 39 S. L. R. 873). The Commissioners, four in number, three being a quorum (s. 10 (5)), are appointed by the Chairmen from panels of the members of both Houses of Parliament formed under Standing Orders (see S. O., H. C. 253, H. L. 185), one of the Commissioners being at the same time nominated Chairman (s. 5 (1) (2)). The Chairman has a casting as well as a deliberative vote (s. 10 (6)). The Commissioners are primarily to be appointed two from the parliamentary panels of each House (s. 5 (3)), but, if this cannot be done, three or all of them may be members of the same parliamentary panel (s. 5 (4)). If the requisite number of Commissioners cannot be obtained from either of the parliamentary panels, provision is made for so many persons as are required to make up the number of Commissioners being taken by the Secretary for Scotland from an extra-parliamentary panel consisting of twenty persons, qualified by experience of affairs to act as Commissioners, whom the Act directs to be nominated for the purpose by the Chairmen acting jointly with the Secretary for Scotland (ss. 4, 5 (5)). Casual vacancies may be filled up by the Secretary for Scotland out of any of the panels (s. 5 (6)). The Commissioners must have no personal or local interest in any of the orders into which they are to inquire, and must make a declaration to that effect (s. 5 (8); see also G. O. 80). Sec. 14 provides for payment of their travelling and subsistence expenses.

The Chairman of the Commissioners appointed for any local inquiry must, as soon as may be after his appointment, inform the Secretary for Scotland of the time and place fixed for the inquiry, and the latter must then notify the promoters and objectors thereof. The inquiry must not, except of consent, be held before the expiry of seven days from the issuing of such notification, and the promoters must advertise the time, place, and subject of the inquiry. Three clear days before the inquiry, the promoters must deposit at the office of the Secretary for Scotland, Whitehall, three signed copies of the filled-up order as proposed to be submitted to the Commissioners, the term "filled-up order" being used to denote the order as embodying the amendments and adjustments which have been made as the result of negotiations between the promoters and the various public departments and objectors (G. O. 76).

As regards the conduct of the proceedings at the local inquiry, reference may be made to sec. 6 of the Act and General Orders 80-97. At the first inquiry held under the Act the Chairman announced that the general procedure to be adopted at such inquiries would follow the practice before parliamentary committees, the Commissioners being guided as to minor details by the practice of the Scottish Bar (*Highland Railway*, 1901, 1 P. L. R. 1, 38 S. L. R. 860; see also *Glasgow Corporation*, 1901, 1 P. L. R. 31, and *Paisley District Tramways*, 1901, 1 P. L. R. 70, for the order of evidence and speeches in the case of an order consisting of distinct parts, and in the case of competing applications). One of the two counsel to the Secretary for Scotland for the purposes of the Act undertakes the duty of clerk to the Commissioners. Parties may appear and be heard by themselves, their counsel, agents, and witnesses (s. 6 (3)). Sec. 10 deals with the powers of the Commissioners as regards the summoning and examination of witnesses, the committal of persons guilty of contempt of Court, and the enforcement of orders by the Commissioners, etc. The Commissioners are specially empowered to hear and determine any question of *locus standi* (s. 6 (1)), and the decisions pronounced by Commissioners on such questions will be found in the Private Legislation Reports and Scottish Law Reporter. The prin-

ciples of the parliamentary practice in this matter are recognised as generally applicable (see *Locus Standi*, *ante*, Vol. VIII. p. 144). It is specially provided (s. 6 (1)) that Commissioners are not to sustain the *locus standi* of any person who has not in the prescribed manner, and within the prescribed time, objected to the proposed order, unless on special grounds established to the satisfaction of the Commissioners, and subject to such conditions as to costs or otherwise as the Commissioners may determine. (For decisions under this provision, see *Arizona Copper Co. Ltd.*, 1901, 1 P. L. R. 14, 38 S. L. R. 862; *Ayr County Buildings*, 1901, 1 P. L. R. 51; *Glasgow Corporation (Tramways and General)*, 1901, 1 P. L. R. 62, 38 S. L. R. 865; *Glasgow Corporation Tramways*, 1903, 3 P. L. R. 44.) A novel provision contained in sec. 17 gives a *locus standi* to persons objecting to an order on the ground that the undertaking proposed to be authorised will destroy or injure any building or other object of historical interest, or will injuriously affect any natural scenery. Objections lodged on such grounds are to be considered by the Secretary for Scotland, who may, if he thinks fit, refer them to the Commissioners, who are directed to give the objectors a proper opportunity of being heard.

It is thought that the Commissioners have no power to award expenses except in the single case of their allowing a *locus* to late objectors under sec. 6 (1). See *Clyde Navigation Trust*, 1901, 1 P. L. R. 58. The Commissioners are to sit as far as possible from day to day, and on finishing the inquiry they must submit a report to the Secretary for Scotland with the evidence taken and the recommendations made by them. They may recommend that the order should be issued as prayed for or with modifications, or should be refused (s. 6 (5)). Recommendations made by the Chairmen or by any public department with reference to any particular order are referred to the Commissioners appointed to inquire into it, and the Commissioners must specially notice such recommendations in their report, and should they not agree to them must state their reasons for dissenting therefrom (s. 6 (4)). (See further as to the Commissioners' report, G. O. 87, 92-97, and as to matters directed to be specially reported upon, G. O. 101-106, 110-113, 122, 131, 132, 135, 136.) If the Commissioners report that the order should not be made, the Secretary for Scotland refuses to issue it, and the application fails, without appeal. Otherwise the Secretary for Scotland may issue the order as prayed for, or with such modifications as shall appear to be necessary in view of the recommendations of the Commissioners, the Chairmen, the Treasury, and other prescribed public departments. If any modification has been made on the draft order as originally lodged, the Secretary for Scotland must cause a printed copy to be deposited in the various public offices specified at least fourteen days before issuing the order (s. 8 (1), G. O. 98). As soon as possible after the issue of the order, the promoters must serve a copy of it upon the objectors who have not withdrawn (s. 8 (2), G. O. 77). All modified draft orders are referred by the Secretary for Scotland to the examiner for report as to whether the General Orders have been complied with (G. O. 74).

The order has no validity until confirmed by Parliament, and the Secretary for Scotland accordingly next proceeds to submit the order to Parliament in a confirmation bill (s. 8 (3)). If before the expiry of seven days after the introduction of the confirmation bill a petition is presented against the order, any member may give notice that he intends to move that the bill be referred to a joint committee of both Houses of Parliament. If the motion, which may be moved immediately after the bill is read a

second time, be carried, the bill stands referred to a joint committee accordingly, and parties may appear and be heard before the joint committee by themselves, their counsel, agents, and witnesses (s. 9 (1)). The joint committee hears and determines any question of *locus standi* (s. 9 (1)), and it has power by a majority to award costs (s. 9 (3)). Its report is directed to be laid before both Houses of Parliament. If, however, no such motion be made for the reference of the confirmation bill to a joint committee, the bill is to be deemed to have passed the committee stage and is ordered to be considered as if reported by a committee (s. 9 (4)). When the bill has been read a third time and passed in the first House, the like proceedings are directed to be taken in the second House (s. 9 (4)).

It may be taken that a confirmation bill will only be referred to a joint committee where there have been grave errors in procedure or a serious miscarriage of justice before the Commissioners, or where new and material facts have emerged (*Arizona Copper Co. Ltd.*, 1901, 1 P. L. R. 18), and a bill will only be recommitted where a good *prima facie* case has been set forth (*Glasgow Corporation (Police)*, 1901, 1 P. L. R. 36). It is thought that if no motion for recommitment is made in the House in which the confirmation bill originates, such a motion is not competent in the second House (*Ardrossan Harbour*, 1901, 1 P. L. R. 11). As regards the competency of introducing amendments at various stages in Parliament, see *Glasgow Corporation (Police)*, 1901, 1 P. L. R. 43; *Glasgow Corporation (Tramways and General)*, 1901, 1 P. L. R. 65; *Hamilton Burgh*, 1901, 1 P. L. R. 78.

The fees payable by promoters and objectors are fixed by the Chairmen acting jointly with the Secretary for Scotland, and with the consent of the Treasury, under sec. 15 (1), and are embodied in General Order 148. They are required to be remitted to the Scottish Office by letter addressed to the Under Secretary for Scotland, bank drafts and cheques being made payable to His Majesty's Paymaster-General and crossed to the account of that officer at the Bank of England. A daily note of fees payable in respect of proceedings before the examiner or Commissioners is handed to the parties appearing at such proceedings, the total falling to be remitted to the Scottish Office at the close of the proceedings in the manner above described (see the official *Journal*).

With regard to proceedings under or in pursuance of the Act, sec. 11 provides that county councils are to have the same powers and be subject to the same restrictions as they at present have or are subject to under sec. 56 of the Local Government (Scotland) Act, 1889, in regard to private bills or confirmation bills, while town councils are to have the same powers and be subject to the same restrictions as they now have or are subject to in regard to private bills or confirmation bills. As town councils in Scotland have no general statutory powers with regard to parliamentary proceedings, the section merely continues to them their constitutional right to petition Parliament. On the other hand, the effect of the section is to confer on county councils, subject to compliance with the provisions of the Municipal Corporations (Borough Funds) Act, 1872, which are incorporated into the Local Government (Scotland) Act, 1889, a statutory power to oppose provisional orders under the new Act, but not to promote them. County councils and town councils may make a report to the Commissioners appointed to inquire into any draft order relating to their localities (s. 11 (3)). [See Constable and Beveridge's treatise on *Provisional Orders*, which contains a detailed account of the procedure under the new Act and a large collection of forms; Greig's *Private Legislation Procedure*; the series of *Private Legislation (Scotland) Reports*, published annually by Messrs. William

Green & Sons, which contain reports of all important points decided under the Act, including decisions on compliance with General Orders and on *locus standi*, and also give the decisions of Commissioners on the merits of applications, where such are of general interest, and in many cases the full text of special clauses which the Commissioners have sanctioned, and which are likely to be useful as precedents.]

**Procurator-Fiscal** (X. 55).—A conviction obtained by a person acting for the procurator-fiscal during his absence, but not qualified, was quashed (*Walker*, 1899, 3 Ad. 102, 2 F. (J.) 18, 7 S. L. T. No. 281, 37 S. L. R. 239). The House of Lords (reversing the judgment of the Court of Session, from which Lord Young dissented) have held that the procurator-fiscal of Lanark is not entitled to remuneration from the County Council for the work done by him in the county other than (1) criminal prosecutions where papers are submitted to Crown Counsel, and (2) criminal prosecutions in the Sheriff Court proceeding on a warrant from the Sheriff (*Hart*, 10th March 1904 (H. L.), 11 S. L. T. p. 426).

**Productions** (X. 65).—See LODGING PAPERS, ETC. (XIV. *supra*).

**Prostitution.**—See IMMORAL TRAFFIC (SCOTLAND) ACT, 1902 (XIV. *supra*); DISORDERLY HOUSE (IV. 251); CRIMINAL LAW AMENDMENT ACT (III. 377).

**Provisional Order** (X. 83).—See PRIVATE LEGISLATION PROCEDURE (XIV. *supra*).

**Public Authorities' Protection Act, 1893.**—See REPARATION (XIV. *infra*).

**Public Houses.**—See LICENSING (SCOTLAND) ACTS (XIV. *supra*).

**Quinquennial Prescription** (X. 128).—Pursuers for arrears of multures were found entitled to prove their right to commuted multures, said to be due for years prior to the prescriptive period, by the writ or oath of the defenders (*Magistrates of Edinburgh*, 1903, 11 S. L. T. p. 105, 40 S. L. R. 666). Deposits are not “bargains relating to moveables or sums of money” in the sense of the Act 1669, c. 9, and questions relating to deposit can be proved *prout de jure* after the lapse of five years (*Taylor*, 1901, 4 F. 79, 39 S. L. R. 83). As to prescription of arrestments, a multiplepoinding in regard to which had fallen asleep, and slept for forty years, see *Pillans & Co.* (1897 (O. H.), 5 S. L. T. No. 241).

**Railways** (X. 130).—*Construction.*—See 16 of the Railway Clauses Act, 1845, empowers companies to do all things necessary “for making, maintaining, altering or repairing, and using the railway.” A railway

company was bound by its Special Act to complete its work within seven years from the passing thereof. Many years after the expiry of these seven years, the company proposed to build an embankment by the side of a river, on ground shown in the plan and books of reference deposited with the application for their Special Act. The riparian proprietors opposite endeavoured to interdict them from proceeding with the work. It was held that the operations were within the company's statutory powers (*Dennistoun's Trs.*, 1900 (O. H.), 7 S. L. T. No. 444).

*Commissioners.*—The Court of Session has jurisdiction to entertain an action between two railway companies for the division of sums collected as freight for through carriage, and lying in the clearing-house as suspensive account (*Great North of Scot. Rwy. Co.*, 1899 (O. H.), 7 S. L. T. No. 214).

*Rates.*—It does not constitute an undue preference for a railway company to issue season tickets to traders at rates varying in accordance with the amount of the traffic sent by each trader respectively over the line (*Inverness Chamber of Commerce*, 1901 (Railway Commissioners), 9 S. L. T. No. 54, 38 S. L. R. 842). It constitutes an undue preference for a company to deliver the goods of one trader at his private siding, and at the same time to refuse to deliver at his siding the goods of other traders (*Cowan & Sons*, 1901, 3 F. 677, 9 S. L. T. No. 255, 38 S. L. R. 514). The commissioners have no jurisdiction to order a company to deliver or receive goods at a private siding (*Cowan & Sons, cit.*).

*Electrical Power.*—With the object of facilitating the introduction and use of electrical power on railways, the Board of Trade is authorised (by 3 Edw. VII. c. 30) to make orders, upon the application of a railway company, for the purpose of enabling the company to introduce electricity in addition to or substitution for any other motive power. These orders, on coming into operation, have effect as if enacted by Parliament.

*Light Railways.*—The Act of 1901 (1 Edw. VII. c. 36) authorises the payment of salary to a second commissioner.

*Prevention of Accidents.*—See ACCIDENTS ON RAILWAYS (XIV. *supra*).

**Rape** (X. 175).—See also CRIMINAL LAW AMENDMENT ACT (XIV. *supra*).

### **Rating** (X. 176).—A. *Valuation.*

“*Machinery fixed or attached.*”—See FIXTURES (XIV. *supra*). The doctrine of *res judicata* has no application in questions before the Lands Valuation Appeal Committees (*Lamont*, 1900, 2 F. 610). *Value.*—The obligation binding on a “tied” public-house tenant to take his liquor from the landlord is a “consideration other than rent” (*Annan*, 1899, 1 F. 586, 36 S. L. R. 600). Relationship between landlord and tenant does not *per se* affect the *bona fides* of a lease (*Reid*, 1902, 4 F. 543, 9 S. L. T. No. 424, 39 S. L. R. 854; *Bowman*, 1900, 2 F. 604). A tobacco-stall in a railway station falls within the category of a book-stall rather than within that of a refreshment-stall. It is valued by the assessor of railways as part of the undertaking, and does not fall to be separately valued by the burgh assessor (*Glasgow Assessor*, 1899 (O. H.), 7 S. L. T. No. 14).

### B. *Assessment.*

Buildings exclusively appropriated to public religious worship are

exempted from liability for rates for any county, burgh, parochial, or other local purpose (37 & 38 Vict. c. 20, s. 1); when mission and church halls are occasionally used for social meetings they do not fall within this exempted class (*College Street U.F. Church*, 1901, 3 F. 414, 8 S. L. T. No. 334, 38 S. L. R. 265). A county council are entitled to impose an assessment on a special drainage district to meet the expense, legal and otherwise, incurred in connection with the formation of the district (*Inverarity*, 1903 (O. H.), 11 S. L. T. p. 248).

**Reclaiming Note** (X. 210).—A reclaiming note must be signed by counsel: it is not sufficient if the party sign it (*Hawks*, 1899, 2 F. 95, 39 S. L. R. 70). Although this is the rule, nevertheless where a party conducting his own case explained to the Court that he was unable to procure counsel's signature, the Court allowed him to sign the note himself (*Whyte's Factor*, 1900, 37 S. L. R. 784). Recently the Court also heard another case in which the reclaiming note was signed by the party himself (*Davies*, 1901, 4 F. 3, 39 S. L. R. 4).

An interlocutor in an entail petition granting the prayer subject to a report from a man of skill upon the terms of a particular document, may be competently reclaimed, notwithstanding sec. 6 of the Distribution of Business Act, 1857, which excludes review in summary petitions until the Lord Ordinary has pronounced judgment on the merits (*Macqueen*, 1899, 1 F. 859, 36 S. L. R. 649). In terms of that section, interlocutors upon the merits must be reclaimed within eight days, otherwise they become final. Where they are not so reclaimed, they cannot be reviewed on a reclaiming note against a subsequent interlocutor (*Barr's Curator*, 1903, 5 F. 856, 11 S. L. T. p. 73, 40 S. L. R. 625).

A reclaiming note boxed without prints of the record is incompetent, and cannot be heard even of consent (*Wallace*, 1899, 1 F. 575).

**Reformatory Schools** (IV. 379).—The Reformatory Schools Act of 1899 (62 & 63 Vict. c. 12) amends sec. 1 of the Act of 1893 (which section is printed at p. 379 of Vol. IV. *supra*) by adding this proviso to the end of that section, viz.: “Provided that where the offender is ordered to be sent to a certified reformatory school, he shall not in addition be sentenced to penal servitude or imprisonment.”

**Reparation** (X. 281).—Where a medical practitioner makes, without authority, a *post mortem* dissection of a body, an action for damages lies against him at the instance of a child of the deceased (*Pollok*, 1900, 2 F. 354, 7 S. L. T. No. 337, 37 S. L. R. 270). “The person to whom papers are entrusted for a special purpose has only a qualified possession for that purpose, so that any ultraneous use of the papers by him is an infringement of the proprietary rights of their owner,” and renders him liable in damages (per Ld. McLaren in *Brown's Trs.*, 1898, 25 R. 1112, 6 S. L. T. No. 140, 35 S. L. R. 877). In *Brown's Trustees'* case a clerk in a firm of solicitors made copies of clients' papers, showing the profits in a distillery, and sent the information to the Department of Inland Revenue.

The Public Authorities' Protection Act, 1893, provides that an action against any person for any act done in pursuance or execution or intended

execution of any public duty or authority shall not lie or be instituted unless it be commenced within six months after the act, neglect or default, complained of, or, if the injury be a continuing one, within six months next after the ceasing thereof. An action does not commence so as to stop the running of the time limit under the Act, by the intending pursuer within the six months merely taking steps to get upon the poor's roll (per Ld. Low in *M' Ternan*, 1898, 1 F. 333, 6 S. L. T. No. 157, 36 S. L. R. 239). The Act does not apply to an action brought against a county council for damages for fault arising in course of carrying out the provisions of the Public Health Act, 1897, inasmuch as the latter Act contains special provisions as to the liability of the authorities, and specifies the time within which an action must be brought (*Gilikan*, 1902 (O. H.), 9 S. L. T. No. 368; see also *Duncan*, 1902, 5 F. 160, 10 S. L. T. No. 251, 40 S. L. R. 140). The Act does not apply where an action is raised against a county council for reduction of the election of a councillor (*Stirling*, 1900 (O. H.), 7 S. L. T. No. 351). Nor does it apply to an action between trustees on a public trust and vassals who claim repetition of sums overpaid by them (*Heriot's Trust*, 1900 (O. H.), 7 S. L. T. No. 369).

**Revocation** (X. 340).—A destination inserted in a bond and disposition in security by the creditor is not of the nature of a special legacy, and is revoked by a subsequent general disposition, in which the testator revokes "all former dispositions and settlements made by me." Even without such a clause, the general disposition itself may, on inference drawn from the settlement, be a revocation of prior settlements (*Bryden's Trs.*, 1898, 25 R. 708, 5 S. L. T. No. 447, 35 S. L. R. 545). On the other hand, a special destination of heritage taken by a proprietor will not be revoked by his subsequent general testamentary disposition, without very clear evidence of his intention to that effect (*Currie*, 1899, 1 F. 648). For a case where I.O.U.'s were in the circumstances held testamentary and not revoked, see *M'Caw's Trs.* (1902, 10 S. L. T. No. 44). A clause in an ante-nuptial marriage-contract empowering the wife to call on the trustees to pay to her such portion of the trust funds conveyed to her as she might specify, for a specified purpose, "or for any other purpose," operates as power of revocation which entitles her to call on the trustees to denude (*Fowler's Trs.*, 1898, 25 R. 1034). As to the presumption in favour of revocation by the subsequent birth of a child, see *Smith's Trs.* (1897 (O. H.), 5 S. L. T. No. 246, 35 S. L. R. 129), and *Stuart* (1899, 1 F. 1005, 7 S. L. T. No. 114), where it was held that the will was not revoked, the lady having constructively confirmed it after becoming pregnant.

See also VESTING (XIV. *infra*); TRUST (XIV. *infra*).

**Rivers Pollution Prevention Acts** (X. 363).—The Act 61 & 62 Vict. c. 34, enables county councils on either side of the border to act together for the prevention of the pollution of rivers situated partly in England and partly in Scotland.

A riparian proprietor in right of salmon fishing has a right to prevent pollution of the river higher up stream, if the pollution injures spawning beds up the river to the prejudice of his fishing, although it does not directly affect the water *ex adverso* of his lands (*Seafield*, 1899, 1 F. 402, 6 S. L. T. No. 11, 36 S. L. R. 363).

**Roads and Bridges** (X. 366).—Road trustees must, in exercising their statutory right to take minerals for repairing roads, act reasonably, having regard to the interests of the proprietors of the lands, as regards amenity. They may not, e.g., put back the face of a quarry so as to destroy an ornamental road (*Mercer Henderson's Trs.*, 1899, 2 F. 164, 7 S. L. T. No. 244, 37 S. L. R. 119. See also, as to limits in exercise of this right, *Whitson*, 1897, 24 R. 519; *Grahame's Curator*, 1900, 2 F. 671; *Meikle*, 1899, 37 S. L. R. 171).

[Ferguson, *Law of Roads, Streets, Rights-of-Way, Bridges, and Ferries*, 1904.]

**Royal Titles Act, 1901.**—This Act (1 Edw. VII. c. 15) was passed to enable His Majesty, by royal proclamation within six months thereafter, to recognise "His Majesty's dominions beyond the seas" in the style and titles appertaining to the Imperial Crown of the United Kingdom and its Dependencies.

**Sale of Food and Drugs** (XI. 58).—Some amendments are made on the law as to the sale of food and drugs by the Act of 1899 (62 & 63 Vict. c. 51). A penalty (a fine not exceeding £20 for a first offence, not exceeding £50 for a second, and not exceeding £100 for a third) is imposed on any one importing into the United Kingdom any of these articles insufficiently marked, viz.—(1) margarine, or margarine-cheese; (2) adulterated or impoverished butter (other than margarine), milk, or cream; (3) condensed separated or skimmed milk; and (4) "any adulterated or impoverished article of food to which His Majesty may by Order in Council direct that the Act shall be applied." An article is not deemed to be adulterated by reason only of the addition of any preservative or colouring matter which is not injurious to health (s. 1 (7)). The Board of Agriculture may make regulations for determining what deficiency in any of the normal constituents of genuine milk, cream, butter, or cheese, or what addition of extraneous matter or proportion of water, in any sample of milk (including condensed milk), cream, butter, or cheese, shall, for the purposes of the Sale of Food and Drugs Act, raise a presumption, until the contrary is proved, that any of these articles is not genuine or is injurious to health (s. 4 (1)). The Margarine Act, 1887, is extended to margarine-cheese (s. 5). Every occupier of a manufactory of margarine or margarine - cheese, and every wholesale dealer in these substances, must keep a register showing the quantity and destination of each consignment sent out from his place of business, which shall be open to inspection (s. 7). The right of inspection carries with it a right to make excerpts or notes (*Cohen*, 1902, 4 F. 445, 9 S. L. T. No. 318, 39 S. L. R. 322). The amount of butter fat in margarine is restricted to 10 per cent. (s. 8). Any who, by himself or by his servant, in any highway or place of public resort, sells milk or cream from a vehicle or from a can or other receptacle, must have his name and address conspicuously inscribed on the vehicle; otherwise he is liable to a fine not exceeding £2 (s. 9). The Act defines "food" as including every article used for food or drink by man, other than drugs and water, and any article which ordinarily enters into or is used in the composition of human food; and also flavouring matters and condiments (s. 26).

**Tobacco.**—The Oil in Tobaceo Act, 1900 (63 & 64 Vict. c. 35), limits

the amount of oil in tobacco to 10 per cent. Any fatty or oily substance which is naturally present in the tobacco is to be included as oil. Any one having in his custody or possession fit for sale, or tendering for drawback any tobacco containing a greater proportion of oil, incurs an excise penalty of £50, and the tobacco is to be forfeited.

[M. L. Howman, *Sale of Food and Drugs Acts* (1901).]

**Salvage** (XI. 65).—*Property*.—It is a fundamental rule of the law of salvage that something must be saved in order to give valid grounds for a salvage action. Services may be ever so meritorious; they may even result in the saving of life; but if they do not contribute in some degree to the saving of property, there can be no salvage award (*Duke of Portland*, 1900 (O. H.), 8 S. L. T. No. 74). A sailor is liable in damages if he refuse to deliver up the salved vessel after her owner has consigned the full amount of the salvage claimed (*MacKenzie*, 1903 (O. H.), 10 S. L. T. No. 464).

*Life*.—To found a claim for life salvage against a foreign vessel, the services must be “rendered wholly or in part within British waters” (Merchant Shipping Act, 1894, s. 544 (1)). Where the rescue is made on the high seas and the rescued persons are landed in England, there is no claim for life salvage (*Jorgensen*, 1902, 4 F. 319, 10 S. L. T. No. 130, 39 S. L. R. 765).

**Seats in Churches** (XI. 126).—See also HERITORS (XIV. *supra*).

**Separation (of Spouses)**.—See JUDICIAL SEPARATION (XIV. *supra*).

**Sequestration** (XI. 166).—*Award*.—Sequestration of the estates of a deceased debtor is the process for the distribution of his estate. It may be applied for although the deceased was not insolvent; and it will be recalled on the petition of an executor, only if it appear that his administration will be more advantageous for all concerned than that of the trustee in the sequestration (*McLetchie*, 1899, 1 F. 946, 7 S. L. T. No. 88, 36 S. L. R. 757). But the words “deceased debtor,” in sec. 13 (2) of the Act of 1856, are not equivalent to “dissolved company.” In order to obtain the sequestration of a dissolved firm, it is essential to produce evidence of its notour bankruptcy (*Stewart*, 1898, 25 R. 1042, 6 S. L. T. No. 113, 35 S. L. R. 828). Where the statutory requisites have been complied with, the Court has no discretion to refuse to award sequestration on the ground that a judicial factor has already been appointed under sec. 164 of the Act (*Arthur*, 1903 (O. H.), 10 S. L. T. No. 351). It is competent to pronounce a decree of sequestration under the Act against a body of executors-dative *quâ* executors (*Bain and Others*, 1901 (O. H.), 9 S. L. T. No. 9).

*Ranking*.—See. 65 of the Act implies that when a creditor in a sequestration values a security held by him for the purpose of ranking, he virtually offers that security to the sequestrated estate at the value put upon it. The offer needs acceptance. After acceptance, neither the creditor nor the trustee can resile from the bargain (*MacDougall's Tr.*, 1903, 11 S. L. T. p. 110, 40 S. L. R. 655).

*Discharge of Bankrupt.*—Pending a petition by a bankrupt for his discharge, he became insane, and a *curator* was appointed. On a petition by the *curator*, the Court, on a report by the Lord Ordinary, dispensed with the statutory declaration, and remitted to the Lord Ordinary to grant discharge (*Roberts*, 1901, 3 F. 779, 9 S. L. T. No. 18, 38 S. L. R. 586).

**Servitudes** (XI. 264).—*Constitution.*—A servitude may be established or proved by acquiescence inferring a grant, and creating a bar against its exercise being challenged even by the singular successors of the person acquiescing. But to give such a right, the thing acquiesced in must be visible and obvious, especially when it is of such a character and cost as to be inconsistent with its having been allowed merely during pleasure (*Macgregor*, 1899, 2 F. 345, 7 S. L. T. No. 275, 37 S. L. R. 245). An agreement between neighbouring holders of long leases, constituting rights of the nature of servitudes, is not enforceable against singular successors (*M'Tavish's Trs.*, 1900 (O. H.), 8 S. L. T. No. 73). There can be no servitude between two subjects which belong to the same heritor, and are separately possessed only by virtue of a contract of location. The doctrine of servitude is one well limited, and does not admit of being extended by analogy (*M'Tavish's Trs.*, *cit.*; see also *Metcalfe*, 1902, 4 F. 507, 9 S. L. T. No. 350, 39 S. L. R. 378). If two meanings can be placed on a clause imposing a servitude, that meaning is to be given effect to which is most favourable to the servient tenement (see *Clark & Sons*, 1898, 25 R. 919).

*Extinction.*—When the same person becomes owner, both of the dominant and servient tenement, the servitudes are extinguished, and do not revive upon the ownership of the tenements being again divided, unless they are constituted *de novo* (*Union Bank of Scotland*, 1902 (O. H.), 10 S. L. T. No. 40).

*Right-of-Way.*—Where a proprietor had for forty years enjoyed the use of a towing-path along the side of a canal as an access to his property, he was held to have no right to object to an interference with his passage caused by operations of the Canal Commissioners necessary for the performance of their statutory duty in conserving the canal (*Ellice's Trs.*, 1903 (O. H.), 11 S. L. T. p. 182). A somewhat similar rule was applied in the case of a bridge over a railway (*Edinburgh Corporation*, 1903 (O. H.), 11 S. L. T. p. 218). (See also on right-of-way, *Kinross C. C.*, 1900 (O. H.), 7 S. L. T. No. 308; *Cadell*, 1900 (O. H.), 8 S. L. T. No. 5.)

**Settlement.**—(XI. 296). See *Poor: Poor Law* (XIV. *supra*).

**Sheep.**—See *DISEASES OF ANIMALS ACT, 1903* (XIV. *supra*).

**Sheriff** (XI. 305).—*Tenure of Office.*—Upon a report (at the instance of the Secretary for Scotland) by the Lord President and Lord Justice-Clerk declaring that a Sheriff is by reason of inability or misbehaviour unfit for his office, the Secretary for Scotland may issue an order for his removal from office (61 & 62 Vict. c. 8). Such order must lie before both Houses of Parliament for a period of four consecutive weeks while Parliament is sitting; and if either House within that period resolve that such order ought not to take effect, it is of no effect: otherwise it comes into operation

at the expiration of the month. If a Sheriff is so removed on the ground of inability before he has completed ten years' service, the Treasury may grant him an annuity of such amount and for such period as they consider just in the circumstances, but in no case exceeding three-tenths of his salary (s. 2).

**Jurisdiction.**—In all cases in which by statute the proper sentence is limited to two years, the Sheriff, sitting with a jury, has jurisdiction, unless excluded by special provision (per Ld. J.-C. Macdonald in *Wood v. Wright*, 1899 (J.), 2 F. 6, 7 S. L. T. No. 196, 37 S. L. R. 18).

**Ship : Shipping** (XI. 326).—The limitation of liability of ship-owners under sec. 503 of the Merchant Shipping Act, 1894, has been extended by the Act of 1900 (63 & 64 Vict. c. 32; see Vol. XI. p. 333), and now applies to all cases where (without their actual fault or privity) any loss or damage is caused to property of any kind, whether on land or on water, or whether fixed or moveable, by reason of the improper navigation or management of the ship (s. 1). The Act also limits the liability of a harbour conservancy authority to an amount not exceeding £8 for each ton of the tonnage of the largest registered British ship which at the time of the loss or damage occurring is, or within five years previous thereto has been, within the area of the authority (s. 2). The limitation of liability under the Act relates to the whole of any losses and damages arising upon any one distinct occasion, although sustained by more than one person, and whether the liability arises at common law or under an Act of Parliament (general or private), and notwithstanding anything contained in such Act (s. 3). See also SALVAGE (XIV. *supra*).

**Shop Assistants, Seats for.**—In all rooms of a shop or other premises where goods are retailed to the public, and where female assistants are employed for the retailing, the employer must provide seats behind the counter, or in such other position as may be suitable for the purpose, in the proportion of not less than one seat to every three females employed (62 & 63 Vict. c. 21, s. 1). The penalty, on summary conviction, for failure to comply with this provision, is a fine not exceeding £3 for a first offence, and not less than £1 or more than £5 for a second or subsequent offence.

**Shop Clubs Act, 1902.**—See CLUBS (XIV. *supra*).

**Small Dwellings Acquisition Act, 1899.**—See HOUSING OF THE WORKING CLASSES (XIV. *supra*).

**Specification and Diligence for the Recovery of Writings** (XI. 378).—There is no rule that documents called for in a specification must clearly be admissible in evidence: the rule is that the diligence will be refused if it is shown that they cannot be evidence (per Ld. Kinnear, *Mackirdy*, 1903, 40 S. L. R. 313, 10 S. L. T. No. 358; see also *Murphy*, 1902, 4 F. 653). There are two legitimate purposes, and two only, to be served by the examination of a haver. The first is to trace and

recover a document or its copy if it is extant; and the second is to account for its destruction if it has been destroyed; and no question which does not tend to one or other of these two ends is regular or competent (per Ld. Stormonth-Darling, *Somervell*, 1900, 8 S. L. T. No. 76).

**Street Trading.**—See CHILDREN, EMPLOYMENT OF (XIV. *supra*).

**Succession** (XII. 37).—The plea of collation *inter liberos*, in answer to a claim for legitim, can only be maintained by a party entitled to share in the legitim. Trustees representing the interest of the residuary legatees cannot maintain it (*Collins*, 1898 (O. H.), 5 S. L. T. No. 330, 33 S. L. R. 641). The decisions appear to conflict as to whether an heir-at-law who is also next-of-kin is entitled to a share of the income of the moveable estate without collecting the rents of heritage which he receives under the Thellusson Act (cp. *Logan's Trs.*, 1896, 23 R. 848, 4 S. L. T. No. 87, 33 S. L. R. 638, with *Moon's Trs.*, 1899, 2 F. 201, 7 S. L. T. No. 263, 37 S. L. R. 140). The *conditio si institutus sine liberis decesserit* does not apply to the children of an illegitimate child (*Farquharson*, 1900, 2 F. 863, 7 S. L. T. No. 425, 37 S. L. R. 574).

See also JUS RELICTÆ (XIV. *supra*); TERCE (XIV. *infra*); ELECTION (XIV. *supra*); REVOCATION (XIV. *supra*); PRESUMPTIONS (XIV. *supra*); VESTING (XIV. *infra*).

**Superiority** (XII. 152).—*Casualty*.—The *dominium directum* and *dominium utile* of a fee passed into the same hands but were not consolidated. Subsequently they were disposed to separate disponees. While the two estates were in the same hands, the last entered vassal died. The new disponee of the *dominium utile* demanded a casualty. The Court held that the right to demand a casualty had not been extinguished *confusione* (*Mothercivell*, 1903, 5 F. 619, 10 S. L. T. No. 487, 40 S. L. R. 429). Confusion does not operate extinction or discharge; it prevents the possibility of a debt arising; although the estates remained feudally distinct, the money obligations were meantime extinguished (per Ld. Kinnear, *ibid.*). In ascertaining the composition due by a vassal in lands which are partly in course of being worked under mineral leases, the returns from the mines for the year in which the casualty becomes exigible are to be counted as part of the rent (*Earl of Home*, 1903 (H. L.), 5 R. 619, 11 S. L. T. p. 44, 40 S. L. R. 607).

*Feu-Contract*.—Where a feu-contract contains an obligation on the vassal to build, and there are transmissions of the feu, each vassal in turn becomes liable for the performance of the obligation. Where there is a failure to build, the superior is entitled to sue for damages any vassal, or the representatives of any vassal who has died, although such representatives have not taken up the feu (*Rankine*, 1902, 4 F. 1074, 10 S. L. T. No. 170, 40 S. L. R. 4).

**Suspension** (XII. 206).—It is competent to suspend a charge given on a decree *ad factum prastandum* pronounced in absence in the Sheriff Court (*Lamb*, 1901, 4 F. 88, 9 S. L. T. No. 179, 39 S. L. R. 80).

But it is incompetent, by suspension, to bring under review a decree in absence obtained in the Debts Recovery Court, where the complainer has not exhausted his statutory remedies (*Crawford*, 1901 (O. H.), 9 S. L. T. No. 62). As to suspension of small debt decree in Court of Session, see *Curdie* (1902 (O. H.), 10 S. L. T. No. 279). Review by suspension of questions arising under the Valuation Acts is incompetent (per Ld. Pearson, *West Highland Railway Co.*, 1902 (O. H.), 10 S. L. T. No. 267).

**Terce** (XII. 241).—In computing terce the deduction of estate duty is a proper deduction. The principle of the Finance Act is that what falls to be taxed is the interest which ceases by death—not the interest to which some one succeeds upon the death. The estate is diminished to the person succeeding to it by the amount of the duty, and the case of a widow claiming terce forms no exception (*Ross*, 1902 (O. H.), 9 S. L. T. No. 286). A lady on her second marriage conveyed, by marriage-contract, to trustees her whole estate, including a right of terce in the estate of her former husband, for the purpose of paying to her the annual income, or to apply the same for her behoof. The terce subjects were sold under statutory powers, and the capitalised value of the terce was paid to the trustees. The Court held that they must so invest the surrogatum, in annuity or otherwise, that the lady should have the benefit of it and exhaust it during her life (*Bonner's Trs.*, 1898 (O. H.), 6 S. L. T. No. 42). By a deed which disposed of his whole estate, a testator bequeathed to his wife a liferent provision, to be taken by her in full of her legal rights. The persons named as fiars having died before the date of vesting, the fee fell into intestacy. In these circumstances the widow was held to be entitled to terce and *jus relictorum* out of the intestate succession without forfeiting her testamentary provision (*Naismith*, 1899 (H. L.), 1 F. 79; ep. *Moon's Trs.*, 1899, 2 F. 201, 7 S. L. T. No. 263, 37 S. L. R. 140; *Farquharson*, 1900, 2 F. 863, 7 S. L. T. No. 425, 37 S. L. R. 574).

**Thirlage** (XII. 249).—A claim for dry multures may be maintained against a suckener even where there is no mill remaining. This results from the nature of the case, because dry multures are paid by a suckener to discharge him from the necessity of resorting to the mill to which his land is thirled. No service being required in return, the mill may be given up (*Magistrates of Edinburgh*, 1903, 11 S. L. T. p. 105, 40 S. L. R. 666; *Porteous*, 1901, 3 F. 347, 8 S. L. T. No. 289, 38 S. L. R. 258).

**Thrift Funds.**—See CLUBS (XIV. *supra*).

**Tobacco.**—*Oil in Tobacco.*—See SALE OF FOOD AND DRUGS (XIV. *supra*).

**Town-Clerk** (XII. 281).—See 63 & 64 Vict. c. 49, s. 78, and 3 Edw. vii. c. 34, s. 6, as to the appointment and duties of town-clerk. For circumstances in which the Court appointed an interim town-clerk, see *Magistrates of Rothesay* (1902, 4 F. 461, 9 S. L. T. No. 419).

**Town Councils (Scotland) Acts, 1900, 1903.**—The Act 63 & 64 Vict. c. 49, as amended by the Act 3 Edw. VII. c. 34, consolidates and amends the law relating to the election and proceedings of town councils in Scotland. It also provides for the tenure of office of burgh officials, and for the making and auditing of burgh accounts. The Act chiefly consolidates the existing law, but several new provisions are introduced.

[M. L. Howman, *Town Councils (Scotland) Act, 1900, with Notes.*]

**Trade, Board of** (XII. 287).—The Act 3 Edw. VII. c. 31, transferred to the Board of Agriculture (now styled the Board of Agriculture and Fisheries) the powers and duties of the Board of Trade relating to the industry of fishing, as therein set forth. See FISHINGS (XIV. *supra*).

**Trade Union** (XII. 291).—An association of masters for the protection of their trade is a trade union, and cannot be registered under the Companies Acts (*Edinburgh Aerated Water, &c., Co.*, 1903, 11 S. L. T. p. 240, 4 S. L. R. 825).

**Triennial Prescription** (XII. 312).—Arrears of salary of an official in the employment of a municipal corporation are a debt to which the Act 1579, c. 83, applies (*Neilson*, 1899, 2 F. 118, 7 S. L. T. No. 229, 37 S. L. R. 71). Minutes of the town council minuting an official's appointment, but not delivered to him, do not constitute a "written obligation" in the sense of the Act (*Neilson, cit.*). A minute in the minute-book of a trust, duly signed, minuting the appointment of a solicitor to be law agent and factor on the trust-estate, is a "written obligation" under the Act (*Millar, Walker, & Millar*, 1902, 4 F. 846, 10 S. L. T. No. 59, 39 S. L. R. 651); so also is a written request to a law agent to do work, followed by his acceptance in writing (*Jackson*, 1900, 2 F. 968, 8 S. L. T. No. 24, 37 S. L. R. 707).

**Trout, Close Time for.**—See FISHINGS (XIV. *supra*).

**Trust** (XII. 326).—*Revocability.*—Where a man by post-nuptial marriage-contract assigns to trustees policies of insurance, as a reasonable provision for his wife and children born and to be born, and the deed is duly delivered, it cannot be revoked by him even with the consents of the wife and children (*Barras*, 1900, 2 F. 1094, 8 S. L. T. No. 87, 37 S. L. R. 831; *Low*, 5 R. 185; *Peddie's Trs.*, 18 R. 491). A reasonable post-nuptial provision amounts to a *jus crediti* in the wife, and it seems to follow that, when secured over heritable estate either by a deed in favour of the wife or in favour of trustees for her, it will operate as a preferential security in bankruptcy: "but I do not at present see on what principle such a deed should be held to be irrevocable by the joint act of the spouses. . . . It is difficult to see how [the principle of the irrevocability of an ante-nuptial provision secured by a trust] can be applied to the case of a post-nuptial provision, even when put into the form of a contract, because in all such cases the wife is just as free to discharge the provisions as she was to

accept it" (per Ld. McLaren in *Gillon's Trs.*, 1903, 5 F. 533, 10 S. L. T. Nos. 428, 469, 40 S. L. R. 461). In *Gillon's* case the husband granted a trust-deed in favour of his creditors, and provided for payment of the reversion in alimentary liferent to himself or his wife, should she survive him, and the fee as he might direct by his will, or to his heirs-at-law. The Court held that the trust was revocable by the trustee with consent of his wife. See further, VESTING (XIV. *infra*); TRUSTEE (XIV. *infra*); CHARITABLE TRUST (XIV. *supra*).

**Trustee** (XII. 346).—*Duties and Powers.*—Trustees are entitled to grant a new lease of minerals, where the tenants under a lease in existence at the opening of the trust give up the lease (*Dick's Trs.*, 1901, 3 F. 1021, 9 S. L. T. No. 96, 38 S. L. R. 744). Trustees appointed under the Act of 1867 have all the powers conferred by the trust-deed on the original trustees—including a power to appoint one of their number as law agent, and to remunerate him (*Allan's Trs.*, 1899 (O. H.), 7 S. L. T. No. 39). Where trustees hold estate for children in whom the fee is vested, but from whom payment is withheld until a future date, there being no direction to accumulate, they may make advances out of income towards the education of the beneficiaries (*Normand's Trs.*, 1900, 2 F. 726, 7 S. L. T. No. 416, 37 S. L. R. 517). A power to sell heritage does not include a power to examb; the authority of the Court is necessary (*Bruce*, 1900, 2 F. 948, 8 S. L. T. No. 52, 37 S. L. R. 739). Power was granted to trustees to sell heritage (which they were directed by the trust-deed to hold) in these circumstances: there was no express prohibition of sale; the beneficiaries concurred; and a reporter was of opinion that the property was in a ruinous condition, and the trustees had no funds for its repair (*Fiddes's Trs.*, 1899 (O. H.), 7 S. L. T. No. 97).

*Investments.*—(See *Currie and Others*, 1901 (O. H.), 9 S. L. T. No. 141; *Patrick*, 1901 (H. L.), 3 F. 14, 38 S. L. R. 613; *Henderson's Trs.*, 1900, 2 F. 1295, 38 S. L. R. 976; *Lynch's Factor*, 1900, 2 F. 653, 37 S. L. R. 462). See also COLONIAL STOCK ACTS (XIV. *supra*).

*Removal, etc.—Resignation.*—Although trustees are equally divided upon a point of administration, the Court will not necessarily supersede them by the appointment of a judicial factor, unless there is a likelihood of a permanent deadlock, or that injury to the estate will be caused by the disagreement (*Yull*, 1901, 3 F. 96, 8 S. L. T. No. 210. See also *Dick and Others*, 1899, 2 F. 316, 7 S. L. T. No. 277, 37 S. L. R. 232). But where trustees are guilty of negligent administration, careless book-keeping, and unduly protecting their own interests at the expense of the trust-estate (as in a litigation between them and certain beneficiaries), the Court will supersede them, for the time being at least, and appoint a judicial factor (*Hendersons*, 1901 (O. H.), 9 S. L. T. No. 11). Where three out of four trustees appointed by a testator refused to act along with the fourth, on the ground that he had interests conflicting with those of the trust, the fourth appointed two persons of good position to act along with him. In these circumstances the Court refused, on a petition by a beneficiary, to appoint a judicial factor (*Young*, 1901 (O. H.), 9 S. L. T. No. 13).

**Tutor** (XIII. 1).—A father who is suing, not for himself, but as tutor and administrator-in-law of his pupil child, may settle the action on such terms as he pleases; and the Court will not interpose on the ground

that the bargain is a bad one for the child (*Gow*, 1899, 2 F. 48, 7 S. L. T. No. 210, 37 S. L. R. 40). A mother of a pupil domiciled in a foreign country, being appointed its guardian in terms of the law of that country, is capable of granting a valid discharge to Scottish trustees in respect of sums due to the ward (*Elder*, 1902, 5 F. 307, 10 S. L. T. No. 293, 40 S. L. R. 178). Where the mother of pupil children, whose father died intestate, petitioned for the appointment of an Englishman to act along with her as tutor, the Court appointed him on condition of his granting a bond prorogating the jurisdiction of the Court of Session (*Sim*, 1901, 3 F. 1027, 9 S. L. T. No. 116, 38 S. L. R. 754). A curator *ad litem* having been appointed to pupil children in an action of reduction of a trust-deed, the Court ordered the trustees to put him in funds to consider the defence of the action (*Smith*, 1900 (O. H.), 8 S. L. T. No. 180).

**Udal Law** (XIII. 28).—A person may show a good title to property in the foreshore in Shetland without reference to any Crown Charter (*Smith*, 1903, 5 F. 680, 10 S. L. T. No. 470, 40 S. L. R. 562).

**Usury : Usury Laws** (XIII. 54).—See MONEY-LENDERS (XIV. *supra*).

**Valuation.**—See also RATING (XIV. *supra*); FIXTURES (XIV. *supra*).

**Vesting in Succession** (XIII. 64).—*Vesting of Rights ex lege ; Jus relictæ ; Legitim.*—In *Stewart*, 1902, 4 F. 657, the question was raised whether the right which vests in a widow *jure relictæ* is a third of the *corpus* of her deceased husband's moveable estate, or is only a claim for the money value of one-third of that estate as it stood at her husband's death. The Court found it unnecessary to determine the question, but Lord Moncreiff expressed an opinion, on consideration of the authorities, that, as a general rule, a widow is not, *jure relictæ*, entitled to the *ipsa corpora* of any particular assets of her deceased husband's estate. "It may be," he added, "that the executors of the deceased, if they hold shares, for instance, may be compelled, in satisfaction of the *jus relictæ*, to transfer some of them to the widow instead of realising them at a loss and paying her in cash. But that may be said to be a matter of trust management" (per Lord Moncreiff, in *Stewart*, *supra*, at p. 685). Where the executors of a deceased husband, whose estate consisted of the lease and stock of a farm, carried on the farm after his death to the end of the lease, with the result that the value of the estate increased, it was held by Lord Low, applying the rule recognised in *M'Intyre*, 1865, 3 M. 1074, that the *jus relictæ* was one-third of the deceased husband's estate calculated on its value at the date of his death; but that the widow was entitled to interest from the date of her husband's death, and that 5 per cent. interest was to be allowed in respect the executors of the husband had held the widow's money at risk by trading with it. In *Allan*, 1901, 8 S. L. T. No. 370, it was held by Lord Kincairney that an *inter viros* donation by a husband of his personal estate, with the object of defeating his wife's *jus relictæ*, was good at law, and effectual to prevent any right thereto vesting in the widow. His Lordship observed:

"It must be regarded as now settled law that the power of a husband to alienate his moveable estate by *inter vivos* deed, which wholly divests him of all power over the property disposed, and all benefit from it, is absolute and unqualified, and cannot be regarded as made *in fraudem* of the rights of his wife merely because it reduces her *jus relictæ* or deprives her of it altogether." In *Naismith*, 1898, 25 R. 899; 1899, 1 F. (H. L.) 79, a clause in a testamentary settlement, declaring the provisions made therein in favour of the testator's widow and daughter respectively to be in full of their legal claims, was held to relate exclusively to property passing by *mortis causa* disposition from the testator, and to have no reference to, and not to affect, property which the testator had attempted to dispose of by will, and which had fallen into intestacy by reason of the death of the residuary beneficiaries, subsequent to the death of the testator, but before any right in the residue had vested in them. The result, accordingly, of the death of the residuary beneficiaries was that the residue devolved on the testator's heirs *ab intestato*, subject to the testator's widow and daughter acquiring, in addition to the provisions taken by them *ex testamento*, a vested interest in their *jus relictæ* and *legitim* respectively out of such estate as fell into intestacy. This decision was followed in *Moon's Trs.*, 1899, 2 F. 201, and in *Farquharson*, 1900, 2 F. 863. In the latter case, a child who took a provision under her parents' settlement was held to be entitled, in addition, to *legitim* out of provisions which had fallen into intestacy through the death of the legatees to whom they were destined (*Farquharson*, 1900, 2 F. 863). On the other hand, where a wife in an ante-nuptial marriage-contract had accepted the provisions therein made in her favour in full satisfaction of her legal claims, she was held not entitled to claim *jus relictæ* out of the estate of her husband, on his dying intestate (*Sim*, 1902, 4 F. 944).

*Testaments and Marriage-Contracts—Cardinal Rule of Interpretation—Intention of Testator.*—"It is always to be remembered that the rules of construction applicable to wills are only presumptions—presumptions which may or may not be guides to the true interpretation of the testator's meaning, but which would certainly be misleading if applied in too absolute a manner" (per Lord McLaren, in *White*, 1900, 2 F. 1170, at 1173).

*Express Provision as to the Date of Vesting.*—In *M'Kay's Trs.*, 1903, 5 F. 1086, there was an express declaration in the will that the shares of residue "shall not vest until the respective terms of payment." The estate was subject to a liferent in favour of the trustee's widow, terminable on her death or second marriage. Upon the happening of either of these events, the residue was to be paid to the trustee's children who should survive him, equally, in the case of sons, on majority, and in the case of daughters, on majority or marriage. The Court, taking the view that, on a natural construction, the words "respective terms of payment" had reference to the period at which the children respectively attained majority or were married, gave effect to the testator's declaration as to the date of vesting, and held that though the liferent continued to subsist, a son's share vested in him on his attaining majority — payment alone being deferred until the termination of the liferent.

In *Maefarlane's Trs.*, 1903, 41 S. L. R. 164, at p. 170 (narrated *infra*, p. 89), Lord McLaren, with reference to a declaration in a testamentary settlement that the beneficiaries should have no vested interests in the provisions, observed: "I do not attach very much importance to such declarations, and there is authority for saying that a declaration as to vesting is not decisive, because the word 'vesting' is ambiguous. It may

be used by the testator in the sense, and I think in this case it was used in the sense, that no child should have such a specific vested interest as would interfere with the power given to the trustees to limit or exclude his share. It was evidently for this purpose that the declaration was made, but that declaration is quite consistent with there being a vested general right to such shares as the trustees may think suitable" (*i.e.* in exercise of a power of apportionment), "or, failing that, to equal shares."

*Presumption in favour of Vesting a morte testatoris—Postponement of Payment to Event Certain—Liferent.*—The recent cases, illustrative of the general rule that testamentary bequests are presumed to vest *a morte testatoris*, and that the mere postponement of the period of payment till the death of a life-renter, or other *dies certus*, does not suspend vesting, have been numerous and need not be specified. In the case of bequests to a class, such as "children" or "issue," subject to a right of life-rent in another, the machinery of a trust being interposed, the principle of *Carleton*, 1867, 5 M. (H. L.) 151, that vesting in the class takes place *a morte*, and is not postponed till the death of the life-renter, unless the terms of the deed are such as to exclude that construction, has been reaffirmed in *Hickling's Trs.*, 1898, 1 F. (H. L.) 7—*vide prædictum*, per Lord Shand, at p. 14, *et seq.* The recent cases as to the vesting of a bequest to a class, where the bequest is dependent on a contingency—turning, as they do, mainly on the question whether the contingency is applicable to the class or to the individuals composing the class—are dealt with *infra, sub voce Vesting in a Class—Survivorship*.

With regard to the effect of a gift to one person of both a life-rent and a power of disposal, recent cases have followed the principle stated by Lord Justice-Clerk Inglis in *Alres' Trs.*, 1861, 23 D. 712, at p. 717, that in order that a right of life-rent and a power of disposal, taken together, may amount to a fee, both must be in unqualified terms. In *Rattray's Trs.*, 1899, 1 F. 510, it was held that, both the gift of life-rent and the power of disposal being absolute in character, the provision amounted to a fee—this being the first case presented for decision in which this result was arrived at. On the other hand, in *Douglas' Trs.*, 1902, 5 F. 69, and *Reid*, 1899, 1 F. 969, the power of disposal being limited to disposal *mortis causa*, the beneficiary's right was construed as merely a right of life-rent. Where, in an ante-nuptial contract of marriage, the wife had a life-rent of the whole estate which belonged to the husband at his death, with power to her, in case of failure of children, to test upon or execute conveyances *inter viros* or settlements *mortis causa* of the estate, so as to spite a destination in the deed to the husband's "heirs whomsoever," it was held, the husband having died without issue, and his widow not having exercised any of the powers conferred on her, that she had only a right of life-rent with power to convert it into a right of fee, and that, she not having done so, the fee devolved on the "heirs whomsoever" of the husband at the date of his death (*Howes' Trs.*, 1903, 5 F. 1099).

With regard to the effect of a mere gift of the income of moveable estate to a beneficiary without any disposition of the capital, it has been held that the rule in English law that, in these circumstances, a conveyance of the capital to the beneficiary is implied, does not exist in Scotland. "It may be that, without express words of conveyance or gift of capital, it may appear that the intention of the testator was to bequeath it, but there is no technical rule to that effect" (per the Lord President in *Sims*, 1900, 2 F. 434, at 437). "I venture to think that the question is entirely one of intention, as to whether words importing an absolute unqualified

gift of the income of moveables do or do not carry the capital" (per Lord McLaren in *Sim, supra*, at p. 438).

For further cases on the terms of testamentary provisions sufficient to carry a fee, *vide infra, Directions to Trustees*, pp. 87, 88.

*Direct mortis causa disposition of Heritage to Grantees.*—In *Edmond*, 1898, 1 F. 154, the proprietor of lands executed a disposition of the lands to his son *nominatum* in liferent, for his liferent use only, and "after his death" to the holders of certain offices, and their successors in office, as trustees. The grantor recorded the disposition in the books of Council and Session. After the grantor's death, his son, who was his heir-at-law, brought an action of declarator that he was entitled to the fee of the lands, as heir-at-law of his father, upon the ground that there was no gift of the fee of the lands to the trustees until the pursuer's death, and that, as the fee could not be *in pendente*, the pursuer, as heir-at-law of his father, took it. It was held that the disposition, being testamentary, took effect on the grantor's death and constituted a valid disposition of the lands to the son in liferent and the trustees in fee.

In reference to an argument that, under sec. 20 of the Titles to Land Consolidation Act, 1868, words, in a testamentary disposition, sufficient to carry moveables, were now sufficient also to carry heritable estate, Lord McLaren, in *Sim*, 1900, 2 F. 434, at p. 438, observed: "It by no means follows that language which, when applied to moveable estate, would establish in a liferenter the rights of a fiar, will necessarily have the same effect as to heritage."

*Contingency in Time and Event:*—(a) *Majority or Marriage.*—In *White*, 1900, 2 F. 1170, the distinction between the effect, as regards vesting, of a condition of majority annexed to a gift, and a similar condition annexed to a direction to pay, was accepted as sound. Nevertheless, in that case, although there was no direct gift of the fee, but merely directions to trustees to pay the annual income of a specified sum to the beneficiary during her pupilarity, and to pay over the capital to her on her "attaining her majority," it was held—the beneficiary having died before attaining her majority—that the legacy vested *a morte testatoris*. The ground of the decision was that the form of the trust-directions was due merely to the desire of the testator that the income and capital should reach the legatee in the manner most beneficial and suitable to her. Lord McLaren stated that, in his opinion, "there is a very strong presumption, where income is given unconditionally to the legatee, that a direction to pay at majority is to be regarded as merely an administrative direction, for the two rights of income and eventual fee are given to the same person, and in the ease supposed no other person is mentioned in the bequest as having any interest."

The ordinary rule, *dies incertus pro conditione habetur*, was applied to the effect of postponing vesting in *Ross's Trs.*, 1902, 4 F. 840; *Cattanach's Trs.*, 1901, 4 F. 205; *Neill's Trs.*, 1902, 4 F. 636; *Watson's Trs.*, 1902, 4 F. 798; *Graham's Trs.*, 1899, 2 F. 232.

On the other hand, in *Normand's Trs.*, 1900, 2 F. 726, the condition of attaining majority was construed as being consistent with vesting at the death of the liferentrix, and effectual only to postpone payment until majority. As to the effect of a condition of attaining majority, annexed to a bequest to a class, *vide infra, Vesting in a Class*.

(b) *Words of Survivorship.*—The principle of *Young*, 1862, 4 Macq. 314, that words of survivorship are to be taken primarily as referring to the period of distribution, so that vesting is postponed to that period, has

been followed in a series of cases (*e.g.*, *Legg's Trs.*, 1899, 1 F. 498; *Wilson's Trs.*, 1901, 3 F. 967; *Ganden's Trs.*, 1902, 10 S. L. T. No. 215). In *Bowman*, 1900, 2 F. 624, the residue, after the expiry of a liferent, was to be paid to the testator's nephews and nieces "equally among them, share and share alike," it being declared that the share of any predeceasing nephew or niece should "go and accresce to the survivors." A nephew having predeceased the testator without issue, and a niece having survived the testator but predeceased the liferenter, leaving a daughter, it was held that the form of the bequest to the nephews and nieces effected a severance of the interests given them in the residue so as to prevent accretion from taking place *ex lege*, and, that being so, that the daughter of the niece predeceasing the liferenter was entitled to her mother's original share, in virtue of the *conditio si institutus sine liberis decesserit*, but that, in respect of the survivorship clause, she was not entitled to participate in the lapsed share of the nephew who predeceased the testator. In *Sword's Trs.*, 1902, 4 F. 1005, a direction in a trust-settlement, to pay after a certain event, lapsed shares of residue "to and equally among my other residuary legatees and their lawful issue," was construed as being "in effect and substance a survivorship clause, so that vesting was postponed until that event."

In *Alston's Trs.*, 1902, 4 F. 654, the presumption that a clause of survivorship had reference to the period of distribution (in this case the expiry of a liferent), was held to be excluded by a clause in which "the date of my death" was declared to be the event on which the provision of a beneficiary was to "fall and belong" to him. Looking to the terms of this clause, the Court took the view that the clause of survivorship must be read as referring to the date of the testator's death, and not to the expiry of the liferent, with the result that all the testamentary provisions were held to vest *a morte testatoris* (*ep. McDougal's Trs.*, 1902, 39 S. L. R. 375; *Cairns' Trs.*, 1902, 10 S. L. T. No. 239; *Webster's Trs.*, 1900, 2 F. 695).

"It is perfectly settled law that a right which is not vested at the testator's death may become vested at some intermediate period prior to payment, in consequence of the members of the destination being reduced by deaths to a sole survivor" (per Lord McLaren in *Thompson's Trs.*, 1900, 2 F. 470, at p. 481).

*Directions to Trustees, suspensive of Vesting.*—The recent cases under this category are, most of them, cases in which, in the words of Lord McLaren (*Mackay's Trs.*, 1897, 24 R. 904), "the primary gift is so qualified as to show that no higher right is meant to be given than is more fully explained in the sequel" of the trust-deed. In *Young's Trs.*, 1901, 3 F. 616, a direction to trustees to "hold and apply" the estate for the use and behoof of the trustee's younger children, *nominatum*, under the burden and condition, *inter alia*, that the share falling to M., one of the younger children, should be held by the trustees for behoof of M. in liferent, and should belong to M.'s issue in fee, was held to be inconsistent with M. having a vested fee in her share, even on her death without issue. Again, in *Turnbull's Trs.*, 1900, 2 F. 1183, where the trustees were directed to hold the residue for behoof of the issue of a son of the testator, with declarations (1) that it should not vest in such issue during the subsistence of certain liferents, nor until such issue should attain majority respectively, and (2) that the trustees should have power, if they thought fit, to limit the interest of any beneficiary to a liferent of his share, and to suspend the vesting of the fee of such share, it was held—the trustees having, in the exercise of their power, and prior to the beneficiary attaining majority, restricted the interest of one of the beneficiaries to a liferent, and suspended

the vesting of the fee in him—that no fee vested in him, and that his right was merely one of liferent. In both these cases the argument for vesting, based on *Lindsay's Trs.*, 1880, 8 R. 281, and *Dalglisch's Trs.*, 1889, 16 R. 559, was rejected, and the argument, based on *Muir's Trs.*, 1895, 22 R. 533, that the directions were inconsistent with vesting, was sustained. Where a testator in his settlement left the fee of a portion of his estate to his son, but, by a codicil added some years later, directed his trustees to retain the portion originally destined to his son, and to pay the income thereof to him for his liferent use allenarly, declaring this provision strictly alimentary, but giving the son power to dispose at his death of the capital of the portion in question, the Court took the view that the directions to the trustees in the codicil constituted a revocation of the gift of the fee in the settlement, and accordingly held that no fee vested in the son, but that he was entitled only to an alimentary liferent of the portion in question, with power to dispose of the fee thereof by testament (*Miller Richard's Trs.*, 1903, 5 F. 909). Again, where a testatrix directed her trustees to hold three portions of her estate for her three daughters, one-third for each, and pay them the income of said portions, declaring that, while they should "have no power to obtain payment" of their shares, they should have power to bequeath the same in such way as they might think fit, it was held—although there was no disposal of the fee of the daughters' shares in the event of their not exercising their power of bequest—that the directions were inconsistent with the daughters having a vested right of fee (*Peden's Trs.*, 1903, 5 F. 1014). In a similar case, a testator conveyed his whole estate to trustees, and directed them, *inter alia*, to invest £1000 in their own names for behoof of his daughter, and to pay the interest thereof to her "for her maintenance and support during her life," the *jus mariti* of her husband, in the event of her marriage, being excluded therefrom. It was further provided that, if she died unmarried, the £1000 in question should form part of the residue of the estate, "but should my said daughter be married, said sum of £1000 shall on her death be paid to her heirs and assignees." After the daughter had married and become a widow, it was held that, in respect the primary purpose of the testator was to secure, by a trust, payment to her of the interest on the £1000 for her maintenance during her life, the direction as to the disposal of the capital at her death did not have the effect of giving her a fee during her lifetime to the subversion of the primary purpose (*Douglas' Trs.*, 1902, 5 F. 69). In *Baird's Trs.*, 1903, 5 F. 472, the original gift was in the form of a direction to "divide and apportion" the residue of the trust-estate between the trustee's two daughters *nominatim* equally. But subsequent directions to the trustees to "hold" the daughters' shares for their liferent use allenarly, and, on the death of each of the daughters, to pay her share to her children in such proportions as the daughter might fix by writing under her hand, and, failing children, to dispone to the daughter's nearest heirs, were held to so qualify the original gift as to cut down the right of the daughters to a liferent only of one-half each of the residue.

In *Gifford's Trs.*, 1903, 5 F. 723, the trustee declared that the surplus residue should "belong" to his son in liferent, and to his issue in fee, whom failing, to unmarried nieces of the trustee. In other parts of the settlement, provision was made for a continuing trust. The son had no issue till after the trustee's death. The majority of the whole Court, rejecting the argument, founded on *Frog's Creditors*, 1735, M. 4262, that the disposition was to be construed as conferring a right of fee on the son with a right to immediate payment, held that the testator's intention

was that his son's right should be limited to a liferent, and that the trustees were bound to hold the said surplus residue, until the death of the son, for behoof of his issue, whom failing, for the testator's unmarried nieces.

*Directions not suspensive of Vesting:—(a) Consistent therewith.*—In *Gillies' Trs.*, 1900, 3 F. 238, although there was no direct gift of capital, but merely a direction to hold a share of the residue, "for behoof of" X. and his children, the interest thereof to be paid one-half to X., and one-half to his children, yet, in respect of a subsequent direction to the trustees, if X. and his children "stand in need thereof . . . to expend the capital of said share for and in behalf of" X. and his children, it was held that there was a gift of the fee of the share, to the extent of one-half, to X., and, to the extent of one-half, to his children, which vested *a morte testatoris*. The settlement in this case contained a clause instituting the children of X. in the event of X. "dying before the division of the residue," as well as a clause of survivorship, but it is to be observed that these clauses had clear reference to the death of two annuitants who predeceased the testator, so that, in the events which occurred, these clauses were *pro non scripto* in determining the date of vesting (cp. *Dunlop's Trs.*, 1899, 1 F. 722).

In *Macfarlane's Trs.*, 1903, 41 S. L. R. 164, the trustees were given very extensive powers, e.g., power to exclude one or more of the beneficiaries, the testator declaring that it was his intention to give his trustees the same powers in apportioning, withholding, or dealing with the shares of the beneficiaries, as he himself could have exercised if he were in life. There was, further, a declaration that the children should have no vested interest in the provisions in their favour, but should be in the matter of these provisions entirely under the control of his trustees. Nevertheless, the trustees, after the death of the testator, having, in exercise of their powers of dealing with the shares, ordered by minute that a certain share of the funds should be apportioned and set apart for one of the beneficiaries, the share thus set apart to be invested for the beneficiary in question, and the annual interest to be paid to him as alimentary income, it was held that the restrictions in the minute on the right of the beneficiary were consistent with his having a vested interest in the share apportioned to him in the minute, and, accordingly, that he could, after the date of the minute, effectually test on the share in question.

Where the fee of a fund is given to a class of persons with a power to another person to apportion that fund among them, it is incompetent so to exercise the power of apportionment as to reduce the fee so given to a mere liferent, and any such attempted exercise of the power of apportionment is invalid (*Warrand's Trs.*, 1901, 3 F. 369; *Mathews Duncan's Trs.*, 1901, 3 F. 533; *Neill's Trs.*, 1902, 4 F. 636).

*Directions to Trustees not suspensive of Vesting:—(b) Repugnant to the vested Right.*—The rule must be taken as now established, that it is incompetent to give a vested fee to a beneficiary of full age, and, at the same time, to restrict the rights of, or protect, the beneficiary, or to control his management of the estate which has vested in him. Even where the expression of the testator's intention to restrict the beneficiary's enjoyment or control is distinct, and is coupled with the constitution of a continuing trust as the appropriate machinery to carry his intention into effect, the directions to the trustees to retain the capital of the vested provision, and to pay the income to the beneficiary, or to apply the capital or income in some way for his benefit, are inconsistent with, or repugnant to, the right of fee.

The beneficiary in such circumstances is entitled to require the trustees to denude in his favour, and any direction of the testator to the contrary cannot receive effect (*Yuill's Trs.*, 1902, 4 F. 815; *Johnston*, 1903, 40 S. L. R. 757; *Rattray's Trs.*, 1899, 1 F. 510; *Hargreave's Trs.*, 1900, 3 F. 14; *Ross' Trs.*, 1902, 4 F. 840; *Coats' Trs.*, 1903, 5 F. 401). The rule is excluded where there is an ulterior trust purpose to be served which cannot be secured without the retention of the vested estate in the hands of trustees, or where the trustees have power to divest the beneficiary of his vested right or to restrict his right to a liferent. The application of the rule, and the scope of the exceptions, as illustrated in recent decisions, are dealt with *infra*, *sub voce Relief from Trust-Management*, p. 94.

*Grant of Liferent with destination over of Fee—Effect of Conditional Institution of "Issue" or "Heirs."*—The opinions expressed by Lord Watson and Lord Davey in *Bowman's Trs.*, 1 F. (H. L.) 69, at p. 72 and p. 77, to the effect that a destination to the heirs or issue of the institute is, in the absence of indications of a contrary intention, suspensive of vesting, have been considered by the Courts in a series of cases. In *Thompson's Trs.*, 1900, 2 F. 470, the testator directed his trustees to invest £3500, and pay the annual interest thereof to his daughter H., and in the event (which happened) of H. dying without issue, to pay that sum to his son R. "and his heirs or assignees." R. and H. both survived the testator, and R. predeceased H. Seven judges held that the destination to R. "and his heirs or assignees" did not suspend vesting in R., but that the fee vested in him *a morte testatoris*. Three judges held that the effect of the destination was to suspend vesting until the death of H.; and two judges, that its effect was to suspend vesting during the joint lives of R. and H. Lord Kincairney, who was one of the majority, stated that on a construction of the destination *per se* he would have reached the last-mentioned conclusion; and several other of the judges who were in the majority proceeded on the ground that, while, on the authority of the dicta in *Bowman's Trs. (supra)*, a destination to "heirs" of the institute was an element pointing to the suspension of vesting, a destination to "heirs or assignees" was not to be construed as having that effect. In reference, however, to the last-mentioned opinion, it is worthy of note that, in *MacLeod*, 1903, 41 S. L. R. 130, in a disposition and settlement by a mother, disposing her whole estate to her daughter, "and her heirs and assignees whomsoever absolutely," and reserving her own liferent, it was held that, the deed being testamentary, the destination was a proper conditional institution of the daughter's heirs, so that, on the death of the mother, predeceased by the daughter without issue, the heirs of the predeceasing daughter took the estate, and not the heirs of the mother *ab intestata*. In *Matheson's Trs.*, 1900, 2 F. 556, where the testator's direction was to hold the estate for the liferent use of his widow, and, after her death, to divide it among his children, *nominatim*, equally, share and share alike, "declaring that in the event of the death of any of my said children leaving lawful issue before the said division takes place, the said issue shall succeed to their predeceasing parent's share," it was held by the Second Division that the conditional institution of the issue of children did not prevent vesting *a morte*. Lord Moncreiff, who gave the only opinion, declined to construe the dicta in *Bowman's Trs. (supra)* as overruling the previous current of authority to the effect that a destination in favour of the issue or heirs of an institute, although in form a conditional institution, yielded readily to indications or presumptions pointing to vesting *a morte testatoris* in the parent or ancestor; and he found such an indication in the fact that, as the

children were named, and there were no words which would involve accretion in the event of any of the children predeceasing the liferentrix without issue, the result of holding vesting to be postponed would be partial intestacy, in the event of a child predeceasing the period of payment, without issue (cp. *Taylor's Trs.*, 1903, 5 F. 1010; *Ogle's Trs.*, 1904, 41 S. L. R. 284; and contrast *Sword's Trs.*, 1902, 4 F. 1005, where there were words conferring a right of accretion, which were construed as in effect and substance a survivorship clause—all of which were cases in the Second Division). On the other hand, in *Parlane's Trs.*, 1902, 4 F. 805, where the testator provided that on the death of his son D. his estate should be divided and paid to and among his other children equally, share and share alike, "declaring always that the issue of any of them predeceasing the period of payment to be entitled equally to the share which would have fallen to their parent," it was held by the First Division that vesting was suspended by the conditional institution of issue until the date of payment. In this case, Lord McLaren—whose judgment in *Hay's Trs.*, 1890, 17 R. 961, for the first time clearly formulated the rule which was commented on by Lord Watson and Lord Davey in *Bowman's Trs. (supra)*—observed: "According to the latest and most authoritative decision regarding the vesting of rights subject to a conditional institution in favour of issue, the contingent rights of the issue of the immediate legatees have the effect of suspending the vesting of the estate until the period of payment, unless there be something in the context of the will which indicates that the testator intended the vesting to take place at an earlier period" (per Lord McLaren in *Parlane's Trs.*, 4 F. 805, at 808; cp. *Murray's Trs.*, 1900, 8 S. L. T. No. 228, and *Ganden's Trs.*, 1902, 10 S. L. T. No. 215, in which latter case Lord Stormont Darling held that a direction to trustees to divide a trust-estate on the expiry of a liferent among the children of X., "and their descendants," postponed vesting until the death of the liferenter). In *Gavin's Trs.*, 1901, 4 F. 278; 1903, 40 S. L. R. 879, the trustees in an ante-nuptial contract of marriage were directed to pay the annual proceeds of the estate conveyed to them by the wife and her father, to her, and after her death, in the event of her being survived by her husband, to him, and on the death of both spouses to pay over the capital to the children of the marriage, with a declaration that if any child should die before the said provision should have been paid or become payable, leaving issue, said issue should have right to their parents' share. The wife died survived by her husband and one daughter of the marriage. Lord Davey emphatically reaffirmed the opinion expressed by himself and Lord Watson in *Bowman's Trs. (supra)*, and held that, in respect of the destination over to the issue of the daughter of the marriage in the event of her dying before the period of payment, the fee of the trust-estate could not vest in the daughter of the marriage before the period of payment, namely, the death of her father. Lord Shand and Lord Robertson reserved their opinion on the point.

*Vesting subject to Defeasance.*—In *Gardner*, 1900, 2 F. 679, two sisters, by *inter vivos* deed addressed to three brothers, declared that certain bank stock (purchased by the joint contributions of the brothers and sisters) standing in the sisters' names, was held by them in trust (1) for their parents and the survivor of them in liferent; (2) after the death of their parents, for the liferent of the sisters jointly, and the survivor of them, "subject to which liferents the fee of said stock shall fall and belong" one-half to the children of each sister, and "failing our having children, the fee of said stock shall fall and belong to you our brothers equally, or the survivor of you." After the death of the parents, the sisters (neither of

whom married) and the survivor of them enjoyed the liferent. All the three brothers predeceased both the sisters. It was argued that the trust had failed, and that the principle of vesting subject to defeasance was inapplicable in respect of the condition of survivance as between the brothers, and the contingent right given to issue of the sisters. In spite of the fact that, owing to these contingencies, the person in whom the vesting was to take place was unascertainable at the date of the deed, the Court, construing the deed as if it were a joint settlement by the brothers and sisters, held that, on the death of the second brother, the fee had vested in the last surviving brother, subject to defeasance in the event of the sisters having children. At the same time, Lord McLaren observed: "I am not in favour of the extension of the principle of vesting subject to defeasance to cases of a different character from that to which it has been applied. It is not a mode of construction which can be legitimately applied to a destination which is subject to a condition of survivorship or of attaining a certain age. The application of the principle is limited to cases where there is no existing object between a claimant and his right, but where there is only a possibility of some one coming into existence." Cp. the opinions of the judges in the majority in *Thompson's Trs.*, 1900, 2 F. 470; also *M'Dougal's Trs.*, 1902, 39 S. L. R. 375. In *Corbett's Trs.*, 1901, 3 F. 963, the principle of vesting subject to defeasance was held to be inapplicable, upon the ground that a contingency of survivorship together with a destination over to issue, rendered it impossible to ascertain the person or persons to whom the fee was given until the death of the last survivor of three liferenters.

*Vesting in a Class.*—The law on this subject has been to some extent modified by the decision of the House of Lords in *Hickling's Trs.*, 1898, 1 F. (H.L.) 7, where effect was given to the principle that where a gift is made to the issue of a liferenter contingent upon the liferenter leaving issue, the condition is purified by the liferenter being survived by any one of his issue, with the result that the benefit accrues to all the members of the class, including those who were alive at the date of the testator's death, but who predeceased the liferenter. See observations by Lord Kincairney on this decision in *Crichton's Trs.*, 1900, 8 S. L. T. No. 149. In *Scott's Trs.*, 1900, 2 F. 516, the trust-directions were to "invest and settle" a specified sum in such manner as to secure the liferent to X., and the fee to his children, and, failing X., the capital was to revert to the testator's own next-of-kin. These directions were construed as constituting a gift of the fee of the sum in question to the children of X., the liferenter, and at the same time were held to be consistent with vesting *a morte testatoris*—the effect, as explained by Lord Adam, being that "if there were none of the class in existence when the legacy was to be settled, i.e. the death of the testator, then the trustees would continue to hold the legacy until it should be seen whether any of the class came into existence. But when a child was born, and the class came into existence, then the legacy would vest in him, subject to participation with others of the class as they respectively came into existence" (cp. *Steel's Trs.*, 1902, 5 F. 239; *Matheson's Trs.*, 1900, 2 F. 409; *Sword's Trs.*, 1902, 4 F. 1005; *Ogle's Trs.*, 1904, 41 S. L. R. 284). In *Simpson*, 1900, 2 F. 447, a testator directed his trustees, upon his death, to convey certain heritable subjects to his daughter in liferent, and to her issue in fee. It being clear that the fee vested *a morte*, the trustees acted on the view that the fee was destined to such issue of the testator's daughter as were alive at his death, and to them only, thereby excluding a grandson of the testator, born after the testator's death. It was held, however, that, the destination being to the issue as a class, the grandchild *post-natus* was

entitled to a share, he being within the class. Lord Trayner observed that the direction to the trustees to execute the conveyance "on my death" pointed out merely the time when the conveyance was to be granted, not the persons to whom it was to be granted. No conveyance, of course, could be granted at the appointed time in favour of the grandchild *post-natus, nominativus*, because he had no existence, but a conveyance could quite well be granted in accordance with the terms of the testator's direction, under which the *post-natus* would take benefit when he did come into existence, for a conveyance to the daughter in liferent and her issue in fee would constitute a fiduciary fee in the liferentrix for behoof of her whole issue, or it would create a fee in any of her children named in the conveyance for their own behoof, and a fiduciary fee for any of the same class who afterwards were born. On these grounds, Lord Trayner distinguished the case from the cases of *Wood*, 1861, 23 D. 338, and *Ross*, 1878, 5 R. 833.

The effect of a condition, *e.g.*, majority or marriage, attached to a gift to a class, in determining the members of the class entitled to participate, is illustrated in several recent decisions. Thus, in *Wilson's Trs.*, 1901, 3 F. 967, there was a gift to the issue of a liferenter, contingent not only on the liferenter leaving issue, but also on such issue attaining majority. Certain children of the liferenter survived him and attained majority. In these circumstances, the representatives of a child of the liferenter, who had predeceased his father after attaining majority, maintained, founding on *Hickling's Trs. (supra)*, that a share of the gift to the issue had vested in the predeceasing child. It was held, however, that having regard to the personal nature of the condition as to majority, the gift did not vest in the issue as a class, and that only those members of the class were entitled to participate who fulfilled both conditions, *i.e.* both survived the parent and attained majority. In *Neill's Trs.*, 1902, 4 F. 636, there was a direction to trustees to hold and convey funds for the trustee's daughter in liferent, and, on her death, to her children in fee, equally, upon their respectively attaining the age of twenty-one years, with a destination over to other children of the trustee, in the event of the daughter dying without leaving issue or of her dying leaving issue, but of such issue not surviving to take in terms of the destination. The daughter died leaving three sons. It was maintained, founding on *Hickling's Trs. (supra)*, that vesting took place in the daughter's three sons as a class upon the eldest son attaining majority. This contention was rejected, and it was held that vesting took place in each son only on his attaining majority. It will be observed that in both these cases the decision in *Hickling's Trs. (supra)* was not construed as involving the acceptance of the rule of English law, that in a gift to a class on the members of the class reaching majority, the date of vesting is the date at which the eldest of the class attains majority, all the members of the class in existence at that date being entitled to participate. Where trustees were directed to hold the funds for behoof of the testator's children equally, to vest in them at the age of thirty, and the issue of any who might predecease that age to take their parents' share, it was held that the share of a son who died before reaching the age of thirty, leaving issue, vested in his issue at his death (*Cattanach's Trs.*, 1901, 4 F. 205).

In *Normand's Trs.*, 1900, 2 F. 726, the direction to the trustees was to hold a specified sum for behoof of certain grandchildren of the testator in liferent, and upon the death of any one of their grandchildren, or at any later "period of division," which he or she might appoint, to pay over his or her share of the fund "to or among his or her children, when and as they arrive at majority or are married, whom failing to his or her assignees,

whom failing to my own nearest heirs." On the death of a grandchild, leaving issue, without appointing a period of division, a question arose as to the date of the vesting of his share in his issue. The destination over prevented vesting *a morte testatoris*, but the Court held that, in respect the testator contemplated one period of division only, the death of the grandchild was to be taken as the period of division contemplated, and that the share vested in the deceased grandchild's children existing at that date, and was not postponed until they successively attained majority or were married.

*Effect of Unforeseen Events.*—The principle, recognised in *Harrey's Judicial Factor*, 1893, 20 R. 1016, and *Taylor's Trs.*, 1893, 20 R. 1032, that the divorce of one of the spouses is not equivalent to his or her death in a question as to the vesting of provisions in a marriage-contract in the children of the marriage, has been affirmed in *Gavin's Trs.*, 1901, 2 F. 278; 1903 (H. L.), 40 S. L. R. 879. In that case the marriage was dissolved by decree of divorce, on the ground of desertion, obtained by the wife against her husband, and, in the House of Lords, it was assumed for the purposes of the case that the daughter of the marriage had a vested fee in the trust-estate payable on the death of her father, the surviving spouse, but it was held that, in a question as to the daughter's rights under the marriage-contract, the decree of divorce was not equivalent to the death of the divorced spouse; that therefore nothing was payable to the daughter as long as her father was alive; and that the income, which, but for the divorce, would have been payable to the father during his survivance, fell into the executory estate of the deceased wife.

Where, under a trust-settlement, X., one of the sons of the trustee, was given a liferent of a "share" of the residue—construed by the Court as an aliquot share—the trustees being directed on the son's death (until which event there was to be no vesting) to pay the capital of the share to X.'s children, whom failing to his other next-of-kin, and there was a declaration that any child of the trustee who repudiated the settlement and claimed his legal provisions, should forfeit all right under the settlement, the share of such child going to the other children who should abide by the settlement, it was held that, on X. claiming his *legitim*, he forfeited not only his own rights under the settlement, but also those of his issue or other next-of-kin (*McCaul's Trs.*, 1900, 3 F. 222).

As to the effect on the testamentary provisions of a deceased husband of the election by his widow to take her legal rights instead of the liferent provided to her by the settlement, *vide Cairns*, 1901, 3 F. 545, and *prescertim* observations, per Lord Low (at p. 551), on the effect of the judgment in *Muirhead's Trs.*, 1890, 17 R. (H. L.) 45.

*Relief from Trust-Management—Anticipation of the Period of Payment.*—In *Yuill's Trs.*, 1902, 4 F. 815, the testator directed his trustees, on the expiry of a liferent, to divide his estate among the children of his brothers and sisters, and to retain in their own hands the shares destined to the children of his sisters, and to pay to them neither the capital thereof nor the revenues (which were to be accumulated) so long as their fathers were alive. It was held by a majority of the whole Court that the sisters' children had an unqualified right of fee in their shares, and were entitled to demand payment thereof, notwithstanding that their fathers were alive. The case was referred to the whole Court "with special reference to the decision in the case of *Miller's Trs.*," 1890, 18 R. 301, and the judgment was practically an affirmation of the principle of that decision, namely, that "when a vested unqualified and indefeasible right of fee is given

to a beneficiary of full age, he is entitled to payment of the provision, notwithstanding any direction to the trustees to retain the capital of the provision, and to pay over the income periodically, or to apply the capital in some way for his benefit" (per the judges of the First Division in *Yuill's Trs.* (*supra*)). In the cases subsequent to *Miller's Trs.*, the Courts had shown some reluctance to adopt the principle of that decision, and the judgments were conflicting and seldom unanimous (e.g., *Ballantyne's Trs.*, 1898, 25 R. 621; *Hargrave's Trs.*, 1900, 3 F. 14); but since the decision in *Yuill's Trs.* (*supra*), the principle of *Miller's Trs.* may be taken as established (per Lord Davey in *McCulloch's Trs.*, 1903, 41 S. L. R. 88). Illustrations of the circumstances in which the principle is applicable will be found in *Rattray's Trs.*, 1899, 1 F. 510; *Hargrave's Trs.*, 1900, 3 F. 14; *Ross' Trs.*, 1902, 4 F. 840; and *Coats' Trs.*, 1903, 5 F. 401.

The rule of *Miller's Trs.* (*supra*) is inapplicable where there are "trust purposes" to be served which cannot be secured without the retention of the vested estate or interest of the beneficiaries in the hands of the trustees. In such a case, the right of the beneficiary to payment must be subordinated to the will of the testator (per the judges of the First Division in *Yuill's Trs.* (*supra*)). The difficulty in each case is to determine what constitutes an ulterior "trust purpose," warranting the retention by trustees of capital vested in beneficiaries, or, in other words, preventing the operation of the rule of *Miller's Trs.* In *Miller Richard's Trs.*, 1903, 5 F. 909, Lord Moncreiff expressed the view that it must now be held that "in order to warrant retention where a fee is given, the trust purposes must be connected with other objects and persons than the beneficiary whose share is in question; and that if the purposes are concerned solely with the management of the estate or bequest, and the protection of the beneficiary against his own improvidence, they must be entirely disregarded, and immediate payment must be made to the fair free of all restrictions." An illustration of trust purposes which render it necessary for trustees to retain in their own hands an estate or interest which has vested in beneficiaries, is found in *McCulloch's Trs.*, 1900, 2 F. 749; 1903 (H. L.), 41 S. L. R. 88. In that case, the testator directed his trustees to hold his estate for his children in liferent, and equally among them and their issue in fee, and, on the death of all his children, to divide the estate among the children of his sons and daughters *per stirpes*, declaring that, if any of his children died leaving issue, such child's share of the income should belong to such issue. While two of the testator's children were still alive and had issue, the son of a deceased child of the testator claimed payment of a *pro indiviso* share of the estate which, it was admitted, was vested in him. It was held, however, that he was not entitled to payment thereof before the date fixed by the testator for realising the estate, in respect that the testator did not contemplate the severance of the estate into aliquot portions prior to the date of realisation, but intended that the estate should remain *in globo* till the death of all his children, and that the payment of an aliquot portion to the claimant, prior to that event, might prove prejudicial to the interests of the other beneficiaries. Lord Davey, while expressing an opinion that *Miller's Trs.* (*supra*) was decided upon a sound principle, pointed out that that principle was inapplicable where the share of the estate to which a beneficiary was entitled could not, according to the direction of the will, be ascertained until the arrival of the time at which the testator had directed the share of the estate to be ascertained. Again, in *Graham's Trs.*, 1899, 2 F. 232, a direction to the trustees to pay certain beneficiaries

interest on the amount of their bequests at the rate of 4 per cent. for some years to come (on its turning out that the income of the estate did not suffice for this purpose, so that the payment of the interest meant encroachment on capital), was held to be a "trust purpose" which prevented the trustees being able to pay a provision to a beneficiary having a vested right therein.

Further, of course, the principle of *Miller's Trs.* (*supra*) does not apply in cases where the beneficiary claiming payment does not have a fully vested and unqualified right of fee in the provision of which he claims payment. The recent cases in which a claim by a beneficiary for payment has failed on this ground, have been chiefly cases in which vesting has been held to be inconsistent with the directions or the powers exercised by the trustees (*Miller Richard's Trs.*, 1903, 5 F. 909; *Peden's Trs.*, 1903, 5 F. 1014). Thus, where the testator's primary purpose clearly was to secure, by a trust, the payment to his daughter of the interest on a capital sum "for her maintenance and support during her life," that was construed as imposing upon the trustees the duty of retaining the capital for an alimentary purpose, with the result that other provisions of the trust-deed, which *per se* pointed to the vesting of the capital sum in the daughter during her lifetime, were held ineffectual to subvert the primary trust purpose and entitle her to payment of the capital sum (*Douglas' Trs.*, 1902, 5 F. 69, *præsertim*, per Lord M'Laren, at p. 74).

Further, as pointed out by the judges of the First Division in their opinion in *Yuiill's Trs.*, 1902, 4 F. 815, at p. 819, the rule of *Miller's Trs.* "supposes an indefeasible right of fee, because it may be that where, as in the case of *Chambers' Trs.*, 1878, 5 R. (H. L.) 151, the trustees are empowered in certain circumstances, or in their discretion, to reduce the right of fee to a liferent, it may be their duty to retain the fund until they shall be satisfied that the necessity will not arise for exercising the power."

Several cases of claims for payment of trust-funds in anticipation, upon the ground that the liferentrix was past the age of child-bearing, have been recently before the Courts. The manner in which such claims have been dealt with continues to indicate some degree of uncertainty in the law. In *Gollan's Trs.*, 1901, 3 F. 1035, where certain children claiming immediate payment of the residue of a trust-estate, maintained, *inter alia*, that a lady who was fifty-one years of age was past child-bearing, so that there could be no more heirs of her body than the children who claimed, the Court refused to give effect to the contention, and Lord Adam observed (p. 1039): "I think the more recent authorities hold that a woman cannot be presumed to be past child-bearing at any particular age" (cp. *Beattie's Trs.*, 1898, 25 R. 765). On the other hand, where marriage-contract trustees held funds in trust for the spouses and the survivor in alimentary liferent, and for the children in fee, it was held, the marriage having subsisted for twenty-five years without any children having been born, and the wife having nearly reached the age of seventy, that the trustees were entitled, at the request of the spouses, to apply the trust-funds in the purchase, in the names of the trustees, of annuities on the joint lives of the spouses and the survivor, to be held and applied by the trustees as unassignable income for the alimentary use of the spouses (*De la Chaumette's Trs.*, 1902, 4 F. 745). Where the liferentrix of a trust-fund—the liferent not being declared alimentary—was fifty-seven years of age, and all her existing children (who had a vested fee in the fund, subject to partial defeasance in the event of other children being born to the liferentrix and attaining majority) had attained majority, it was held that the trustees

were entitled to pay over the fund to the children upon these children purchasing an annuity for their mother equal to the income accruing from her life interest, and obtaining and delivering to the trustees a paid-up policy of insurance, providing for the payment of such sum as might be necessary to meet the claim of any future child or children who might be born and reach majority (*M'Pherson's Trs.*, 1902, 4 F. 921).

*Conditional Direction to pay contrasted with Unqualified Gift.*—The principle of *Bryson's Trs.*, 1880, 8 R. 142, has been followed in a number of cases. Thus, in *Graham's Trs.*, 1899, 2 F. 232, the direction was: "Upon my son William attaining the age of thirty years, I direct my trustees to convey to him" certain properties. It was held, following *Bryson's Trs. (supra)*, upon William surviving the testator but dying before attaining the age of thirty, that, as there was no gift except the direction to convey on his attaining the age of thirty, no right to the properties had vested in him (cp. *Sword's Trs.*, 1902, 4 F. 1005—per Lord Trayner, at p. 1009; *Ross' Trs.*, 1902, 4 F. 840). In the last-mentioned case Lord Trayner said: "I think the view that vesting took place *a morte* cannot be sustained. The settlement makes no direct gift to the children, and contains no expression which can be regarded as equivalent to a gift. It contains simply a direction to the trustees to do something at a certain time, until when the children's right to claim does not arise."

In *Scott's Trs.*, 1900, 2 F. 516, a direction to "settle" a sum on children was construed as importing an absolute gift, and so was distinguished from a direction to "pay" as regards its effect on vesting (per Lord Adam, at p. 519).

*Absence of Provision for a Continuing Trust.*—In *Kennedy's Trs.*, 1901, 3 F. 1087, trustees were directed to apply a specified portion of the residue of the trust-estate in the purchase of an annuity for a legatee, with declarations to the effect that it should be alimentary, but there was no provision for the continuance of the trust. It was held that, as the testator did not contemplate a continuing trust for the protection of the legatee, and as an alimentary interest could be protected in no way except by a continuing trust, the effect would be that, even if the direction to purchase the annuity were carried out, it would be at the disposal of the legatee and attachable by his creditors. That being so, the Court held that the legatee should not be put to the disadvantage of receiving the bequest in the form of an annuity, but was entitled to payment of the specified portion of the residue in money.

*Power to Trustees to make Advances.*—In several recent cases a power to trustees to make advances has been regarded as an element pointing strongly to the beneficiaries having a vested interest. In *Gillies' Trs.*, 1900, 3 F. 238, Lord Moncreiff observed: "It is true that there is no direct gift of the capital . . . but this is one of the class of cases in which a gift of the interest, coupled with a power to the trustees to make advances of capital, is sufficient to indicate a gift of the capital to the beneficiary." (See also *Cairns*, 1901, 3 F. 545. Compare observations, per Lord M'Laren, in *White*, 1900, 2 F. 1171, at p. 1173, as to the weight to be attached, in determining the date of vesting, to an unqualified gift of the intermediate income to minor beneficiaries, in cases where there is no gift of the capital except a direction to pay on majority.) On the other hand, where power was given to advance to beneficiaries a third of their "prospective" shares, with a declaration that a beneficiary receiving such advance should be bound to pay to the trustees the legal interest on the sum so advanced "until the arrival of the period of division," the clause was regarded as

pointing to the postponement of vesting (*Ross' Trs.*, 1902, 4 F. 840). Lord Trayner, referring to this clause, said (p. 844): "If the right to this third had vested prior to the period of division, no interest would have been due or exigible. No one pays interest on funds belonging to himself. A direction to give children the interest or produce of their prospective shares between the date of testator's death and the period of division, is held to tell in favour of vesting, and the direction to the contrary, that the children should pay interest on an advance, seems to me to tell against it."

*Presumption against Intestacy.*—This presumption has been regarded as an element of some weight in several recent cases. Thus, in *Gillies' Trs.*, 1900, 3 F. 238, Lord Trayner (at p. 241) said: "I think further that it was a gift of fee, for this reason, that if it was not, then the fee was not disposed of at all, and would fall into intestacy, a result which is to be avoided if possible, and in itself rather inconsistent with the fact that the testator was by her deed disposing and intending to dispose of her whole estate."

**Veterinary Surgeons.**—The Veterinary Surgeons Act, 1881 (44 & 45 Vict. c. 62), amended by the Veterinary Surgeons Amendment Act, 1900 (63 & 64 Vict. c. 24), regulates the profession of veterinary surgeons. Veterinary surgeons are not prevented from dispensing medicines for animals under their care by the Pharmacy Act (32 & 33 Vict. c. 117).

**Water Supply.**—See BURGH (XIV. *supra*).

**Workmen's Compensation Act, 1897** (XIII. 222).—The Act has now been extended to workmen employed in agriculture—"by any employer who habitually employs one or more workmen in such employment" (Workmen's Compensation Act, 1900, 63 & 64 Vict. c. 22). "Agriculture" includes "horticulture, forestry, and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry, or bees, and the growth of fruit and vegetables" (s. 1). Where a workman is employed by the same employer mainly in agricultural but partly or occasionally in other work, the Act applies also to the employment in other work (s. 1 (3)). If the employer agrees with a contractor for the execution by him of any work in agriculture, sec. 4 of the Act applies in respect of any workmen employed in such work as if the employer were an "undertaker." But where the contractor provides and uses machinery driven by mechanical power for the purpose of threshing, ploughing, or other agricultural work, he, and he alone, is liable to pay compensation to any workman employed on such work (s. 1 (2)).

*Accident.*—An accident caused to a workman by horse-play on the part of his fellow-workmen does not "arise out of" his employment, and the master is not liable to pay compensation (*London and Glasgow Engineering Co.*, 1901, 3 F. 564, 8 S. L. T. No. 339, 38 S. L. R. 381). Where a labourer going to obtain an article required in his work was killed in using a hoist which the workmen were forbidden to use, the Court held that the accident was one which arose in the course of his employment, and that he had not been guilty of serious and wilful misconduct (*Fullerton, Hodgart, & Barclay*, 1901, 3 F. 1006, 9 S. L. T. No. 131, 38 S. L. R. 738). But where a workman employed in decorating

a church, and, being unable to open the door, climbed over a spiked railing to get in by a window, when he spiked his foot and died as the result, it was held that the accident did not arise out of and in the course of his employment (*Gibson*, 1901, 3 F. 661, 8 S. L. T. No. 402, 38 S. L. R. 450). So held where a miner in going home was walking on a branch railway line leading to the mine, and was killed (*Caton*, 1902, 4 F. 989, 10 S. L. T. No. 129, 39 S. L. R. 762). But where a workman at a pit-head while walking across a line of rails to obtain a drink of water was knocked down and killed by a runaway hutch, the accident was held to have occurred in the course of his employment (*Keenan*, 1902, 5 F. 164, 10 S. L. T. No. 263, 40 S. L. R. 144. See also *Goodlet*, 1902, 4 F. 986, 10 S. L. T. No. 128, 39 S. L. R. 759; *M'Nicol*, 1899, 1 F. 604, 6 S. L. T. No. 432, 36 S. L. R. 428; *Callaghan*, 1900, 2 F. 240, 7 S. L. T. No. 338, 37 S. L. R. 313; *M'Quibban*, 1900, 2 F. 732, 7 S. L. T. No. 417, 37 S. L. R. 526). It is a question of law for the decision of the Court whether or not the conduct of an injured person who has acted in breach of a regulation of his employment is "serious and wilful misconduct" in the sense of the Act (*Daily*, 1900, 2 F. 1044, 8 S. L. T. No. 64, 37 S. L. R. 782. See also *O'Hara*, 1903, 10 S. L. T. No. 401, 40 S. L. R. 355; *Merry & Cunningham*, 1903, 10 S. L. T. No. 402). Although at the time of an accident a man is suffering from a disease which would shorten the natural course of his life, nevertheless if the accident be the proximate cause of death, his representatives are entitled to compensation (*Golder*, 1902, 5 F. 123, 10 S. L. T. No. 244, 40 S. L. R. 89).

*Employment.*—“Factory.” A workman repairing a ship in a public dock half a mile away from his master's shipbuilding yard, is not employed on, in, or about a factory (*Barelay, Curle, & Co.*, 1901, 3 F. 437, 8 S. L. T. No. 314, 38 S. L. R. 321. See also *Ferguson*, 1902, 5 F. 105, 10 S. L. T. No. 230, 40 S. L. R. 58; and *ep. Edinburgh Tramways*, 1901, 4 F. 390, 9 S. L. T. No. 307, 39 S. L. R. 260). A wharf used for unloading a cargo (*Strain*, 1901, 3 F. 663, 8 S. L. T. No. 404, 38 S. L. R. 475), and ship's machinery used for the purpose of unloading, come within the category of a factory (*Reid*, 1903, 5 F. 435, 10 S. L. T. No. 31, 40 S. L. R. 352, overruling *Laing*, 1900, 3 F. 31, 8 S. L. T. No. 385, 38 S. L. R. 29). An itinerant threshing-mill, drawn from farm to farm by a traction-engine, and driven by the engine at the farms, may be a factory while in course of threshing; but it is not a factory while the traction-engine is pulling it along the road, or is disconnected from it (*George*, 1901, 4 F. 190, 9 S. L. T. No. 226, 39 S. L. R. 136).

*Compensation.*—Where a workman was killed immediately on commencing work, and before he had earned any wages, his widow was found entitled to £150, the statutory minimum under Sched. 1 (a) (1) (*Baird & Co.*, 1901, 3 F. 890, 9 S. L. T. No. 67, 38 S. L. R. 649. See also *Forrester & Co.*, 1901, 3 F. 650, 38 S. L. R. 448). As to “average weekly earnings,” see *Small*, 1899, 1 F. 883, 7 S. L. T. No. 54, 36 S. L. R. 700; *Russell*, 1900, 2 F. 1312, 8 S. L. T. No. 145, 37 S. L. R. 931; *Gibb*, 1902, 4 F. 971, 10 S. L. T. No. 116, 39 S. L. R. 750; *M'Hugh*, 1902, 4 F. 909, 10 S. L. T. No. 74, 39 S. L. R. 690; *Grewer*, 1902, 4 F. 895, 10 S. L. T. 72, 39 S. L. R. 687; *Fleming*, 1902, 4 F. 890, 10 S. L. T. No. 73, 39 S. L. R. 684; *Campbell*, 1902, 5 F. 170, 10 S. L. T. No. 254, 40 S. L. R. 143; *Cadzow Coal Co.*, 1900, 3 F. 72, 8 S. L. T. No. 177.

*Procedure.*—Where in an action at common law and under the Employers' Liability Act the Sheriff is of opinion that the pursuer has failed to state a relevant case, it is competent to appoint a diet to discuss the defendant's

liability under the Workmen's Compensation Act (*Henderson*, 1900, 2 F. 1127, 37 S. L. R. 857). In awarding compensation, the Sheriff, as arbitrator, must make inquiry, and may not pronounce decree by default (*United Collieries Company*, 1899, 2 F. 60, 7 S. L. T. No. 204, 37 S. L. R. 47). For opinions for guidance of sheriffs as arbiters, see *Rankine* (1903, 11 S. L. T. p. 283, 40 S. L. R. 828). The claim for compensation, which under sec. 2 has to be made within six months from the occurrence of the accident, may take the form of an application to the Sheriff to fix the amount due; preliminary notice is not necessary (*Great North of Scotland Ry. Co.*, 1901, 3 F. 908, 9 S. L. T. No. 83, 38 S. L. R. 653).

**Youthful Offenders.**—Important amendments on the law relating to youthful offenders were introduced by the Youthful Offenders Act, 1901 (1 Edw. vii. c. 20).

*Power to Discharge Youthful Offender without Punishment.*—In Scotland, if upon the hearing of a charge against a child or young person for an offence punishable on summary conviction under any Act, whether past or future, the Court think that, though the charge is proved, the offence was in the particular case of so trifling a nature that it is inexpedient to inflict any punishment or any other than a nominal punishment, the Court, without proceeding to conviction, may dismiss the charge, and if the Court think fit, may order the person charged to pay such damages not exceeding forty shillings, and such costs, or either of them, as the Court think reasonable (s. 12).

*Register of Convictions of Youthful Offenders.*—In Scotland, in addition to any other register required by law, a separate register of convicted youthful offenders is to be kept for every summary Court by the chief constable or other person charged with the duty of keeping registers of convictions. This register applies to offenders of such age, and includes such particulars, as may be directed by the Secretary for Scotland. It is the duty of the keeper of the register, within three days after each conviction of an offender under fourteen years of age recorded therein, to transmit a copy of the entry relating to the offender to the clerk of the school board for the burgh or parish in which the offender resides (s. 13).

*Removal of Disqualifications attaching to Theft.*—Where a child or young person having been convicted of theft is discharged in accordance with the Probation of First Offenders Act, 1887, or otherwise, or is punished with whipping only, the conviction shall not be regarded as a conviction of theft for the purposes of sec. 15 of the Industrial Schools Act, 1866 (29 & 30 Vict. c. 118), or of any disqualification attaching to theft (s. 1).

*Liability of Parent or Guardian in case of Offence committed by Child or Young Person.*—Where a child or young person is charged with any offence for the commission of which a fine, damages, or costs may be imposed upon him by a Court of summary jurisdiction, and there is reason to believe that his parent or guardian has conducted to the commission of the alleged offence by wilful default or by habitually neglecting to exercise due care of him, the Court may, on information, issue a summons against the parent or guardian of the child or young person, charging him with so contributing to the commission of the offence. A summons to the child or young person may include a summons to the parent or guardian. The charges may be heard together, and for that purpose the charge against the child or young

person may be adjourned. If any fine, damages, or costs are imposed upon the youthful offender, the Court, if satisfied that the parent or guardian has conduced to the commission of the offence by wilful default or habitually neglecting to exercise due care of him, may order that the fine, etc., be paid by the parent or guardian instead of the child or young person ; and may also order the parent or guardian to give security for the good behaviour of the child or young person (s. 2). If the parent or guardian be so ordered to pay or give security, no further charge under the Act can be brought against him in respect of any wilful default or habitual neglect to exercise due care prior to the making of such order ; but he is liable for subsequent default (*ibid.*). Costs ordered are not to exceed the amount of the fine (s. 3).

*Remand or Committal to Place other than Prison.*—A Court of summary jurisdiction, on remanding or committing for trial any child or young person, may, instead of committing him to prison, remand or commit him into the custody of any fit person named in the commitment who is willing to receive him (due regard being had, where practicable, to the religious persuasion of the child), to be detained in that custody for the period for which he has been remanded, or until he is thence delivered by due course of law, and the person so named shall detain the child or young person accordingly, and if the child or young person escapes he may be apprehended without warrant and brought back to the custody in which he was placed. The Court may also exercise the like powers pending any inquiry concerning a child under sec. 19 of the Industrial Schools Act, 1866 (29 & 30 Vict. c. 118). The Court may vary or revoke the remand or commitment, and if it is revoked the child or young person may be committed to prison. A county council, or the town council of a burgh (including a police burgh), or a school board, may defray the whole or any part of the expenses of the maintenance of children and young persons in custody under this section. Where a Court makes such an order, it may make an order on the parent or other person legally liable to maintain the child or young person, requiring that parent or person to pay, as a contribution towards the cost of maintaining the child or young person, such sum, not exceeding 5s. a week, as the Court may think fit, during the whole or any part of the time of his custody. The payment shall be made to the inspector of reformatory and industrial schools, or to a constable or other person authorised by the inspector to receive the payment, and the money paid shall be applied under the direction of the Treasury towards the expenses incurred under this section. There shall be paid, out of moneys provided by Parliament, towards the cost of maintaining any child or young person when in custody under this section, such contribution as may be fixed by regulations made by the Secretary of State with the approval of the Treasury. Where a child or young person is so placed in the custody of a fit person, payments shall be made from the police fund of the place to which the child or young person is sent for his maintenance, in accordance with the regulations made by the Secretary of State, but the police fund shall be repaid through the inspector of reformatory and industrial schools out of the contribution so fixed (s. 4). There is an appeal against an order for maintenance. Provision is made for the recovery of expenses of maintenance from the parent or other person legally liable (s. 6); and for contributions of county councils, which have contributed to the support of a child or young person in a reformatory or industrial school, towards the ultimate disposal of the child or young person (s. 8).

A Court of summary jurisdiction other than a Sheriff or stipendiary magistrate has no jurisdiction against a parent or guardian for any offence constituted by the Act. Where a child or young person is charged before a Court of summary jurisdiction other than a Sheriff or stipendiary magistrate, and it appears to such Court that proceedings under the Act should be taken against the parent or guardian, the Court may remit the further proceedings in the case to the Sheriff, to be dealt with by him under the Act (s. 16).

Proceedings against a child or young person charged with an offence, or against his parent or guardian, commence by complaint in ordinary form at the instance of the procurator-fiscal, and thereafter proceed, as regards citation, service, finding of security, and other steps of procedure, as nearly as may be in accordance with the provisions of the Summary Jurisdiction (Scotland) Acts, or of any general or local Act of Parliament, or of any Act of Adjournal, regulating procedure in the Summary Criminal Court before which the complaint is brought. On the Court of Summary Jurisdiction remitting the further proceedings in a case to the Sheriff, the procurator-fiscal of the Sheriff may present a complaint, and thereafter proceed in the case as if it had originated with him in the first instance (Act of Adjournal, 31st May 1902).

# INDEX



# INDEX

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## ABANDONMENT IN BANKRUPTCY.

*See* Bankruptcy.

## ABANDONMENT. *See* Marine Insurance.

of action (Court of Session) i. 1, 79.

by Counsel, i. 2.

by law agent, vii. 315.

during proof, i. 2.

jury trial, i. 2; vii. 237; xiv. 1.

of action (Sheriff Court), i. 2.

of Appeal Circuit Court, i. 252.

of appeal to Court of Session, i. 261; xii. 299.

of arrestment, i. 318.

of child, i. 1.

of lease, vii. 335.

of mines, iii. 72.

of railways, x. 172.

of ship, xi. 69.

of summary prosecution, iii. 391.

## ABATEMENT—

of demonstrative legacy, xii. 109.

of income tax, vi. 285, 299–301.

of legacy, xii. 109; vii. 371.

## ABBETTOR. *See* Accessory.

## ABBEY—

bailie of the, i. 377.

retiral to, i. 7; xi. 86.

## ABBREVIATE—

of adjudications, i. 8; xi. 195.

of confirmation of trustee, xi. 117.

of sequestration, i. 9; xi. 117, 166.

delay or error in registering, i. 9.

effect of registration, i. 9.

litigiosity, i. 9.

rectification of register, i. 9.

registration of, i. 9.

## ABDUCTION, i. 9; iii. 378.

aggravation of, i. 10.

## ABDUCTION—*continued.*

intent, i. 328.

of voters, iii. 330.

## ABERDEEN—

advocates in, i. 150.

corporation of, ix. 306.

Harbour Commissioners, ix. 307, 319.

Police Court, ix. 319.

University, xiii. 41.

## ABERDEEN ACT. *See* Entail.

## ABEYANCE, i. 10.

## ABIDING. *See* Reduction; Improbation.

## ABJURATION, OATH OF, i. 11.

## ABORTION, i. 11.

## ABROAD, i. 11.

bills dishonoured, ii. 105.

curator, xiii. 5.

Marriage Notice Act, ii. 25; x. 266.

pupil living, xiii. 13.

## ABSCONDING, i. 12.

attempt, i. 13.

of bankrupt, i. 13.

of criminal, i. 12, 288.

of witness, i. 12; xiii. 162.

## ABSENCE. *See* Decree in Absence.

of appellant, i. 18.

## ABSENCE, TRIAL IN—

accused's absence, i. 17.

adjournment, i. 17.

citation, i. 18.

outlawry, i. 17.

prosecutor's absence, i. 17; xiv. 71.

where libel falls, i. 17.

apprehension of respondent, i. 17.

## ABSOLUTE DISPOSITION. *See* Disposition.

## ABSOLUTE WARRANDICE. *See* War-

randice.

## ABSOLVITOR. *See* Decree.

- ABSTRACTED MULTURES, i. 25. *See* Multures; Thirlage.
- ABUSE—  
of civil process, iii. 40.  
of diligence, iii. 41–45; iv. 235.
- ACCELERATION—  
of criminal trial, iii. 381.  
of dividends, sequestration, i. 25.  
of vesting, xiii. 72 *et seq.*, 97; vii. 408.
- ACCEPTANCE. *See* Bill of Exchange;  
Offer and Acceptance.  
of cautionary obligation, ii. 324.  
of deeds, iv. 180.  
of office by curators, iv. 30.  
by executor, v. 141, 142.  
by trustee, xii. 350.  
by tutors, xiii. 7, 8.  
of service, i. 26; iii. 20.
- ACCEPTILATION, i. 26.
- ACCEPTING SERVICE. *See* Citation; Service.
- ACCEPTORS. *See* Accommodation Bill and Bills of Exchange.
- ACCESS—  
to children, iv. 55.
- ACCESSARY, i. 27. *See* Accomplice; Art and Part.
- ACCESSIO, i. 27.
- ACCESSION—  
acquiring property by, i. 28; xi. 377.  
*aluvia*, i. 210.  
*alvei mutatio*, i. 211.  
*avulsio*, i. 368.  
contexture, iii. 256.  
paintings and pictures, ix. 106.  
to the Crown, iv. 6.
- ACCESSION TO TRUST DEED. *See* Trust Deed.
- ACCESSORY ACTIONS, i. 71. *See* Actions.
- ACCESSORY OBLIGATIONS, i. 29.
- ACCIDENT, i. 30; x. 346.  
on railways, xiv. 1. *See* Railways.
- ACCIDENT INSURANCE, i. 30.  
arbitration, i. 34.  
conditions, i. 32.  
limiting risk, i. 32.  
definition of "accidental," i. 32.  
definition of "risks," i. 32.  
disablement, i. 34.  
disease, exceptions, i. 33.  
drowning, i. 32.  
horse, i. 34.
- ACCIDENT INSURANCE—*continued*.  
indemnity policies, i. 30.  
insurable interests, i. 31.  
internal disease, i. 32.  
limitations, i. 33.  
notice of claim, i. 33, 34.  
premiums, i. 32.  
proposal, i. 31.  
Stamp Act, xi. 405, 458.  
suicide, i. 32.
- ACCIDENTS. *See* Fatal Accidents Inquiry Act, 1895; Notice of Accidents Act, 1894.  
Coal Mines Regulation Act, iii. 71.  
Factory and Workshop Acts, vi. 220.  
fatal, no dependents, xiii. 223.  
tramway, xiii. 285.
- ACCOMMODATION BILL, i. 35. *See* Bills of Exchange; Promissory Notes.  
bankruptcy, i. 37; ii. 122; xi. 189.  
discharge of, i. 37.  
liability to holders for value, i. 36.  
notice, i. 36.  
when dispensed, i. 37.  
presentment, i. 36.  
when dispensed, i. 36.  
protest, i. 36.  
when dispensed, i. 37.  
relief, i. 36.  
retention, i. 38.  
rights of parties *inter se*, i. 36.  
cross, i. 38.
- ACCOMPlice, i. 27. *See* Abortion Accessary.  
as witness, i. 38; xiii. 211.  
attempt to murder, i. 346.
- ACCOUNT DUTY, i. 43.  
dutiable amount, i. 45.  
exemptions, i. 44.  
form of account, i. 44.
- ACCOUNTANT, CHARTERED, ii. 407.
- ACCOUNTANT IN BANKRUPTCY. *See* Accountant of Court.
- ACCOUNTANT OF COURT, i. 39.  
bankruptcy department, i. 39.  
aliment of bankrupt, i. 203.  
auditing trustees' accounts, i. 39.  
cessio, i. 39.  
composition, i. 39.  
register of sequestrations, i. 39. *See* sequestration.  
where no Commissioners, i. 39.

ACCOUNTANT OF COURT—*continued.*  
 diversity of practice in Sheriff Court, vii.  
     304.  
 entail, trustees, i. 283.  
 factories, i. 40; xiii. 9, 10, 18. *See*  
     Judicial Factor.  
 annual audit, i. 40; xiii. 11.  
 consignation, i. 41.  
 deceased debtor, iv. 110–112.  
 discharge of factor, i. 41.  
 fees, i. 41.  
 investments, i. 40.  
 register of consignations, i. 41.  
 register of factories, i. 41.  
 reporting thereon, i. 40.  
 special power, i. 40.  
 tutorial inventories, xiii. 8, 11.  
 private accounting, i. 41.  
 private references, i. 41.  
 remits to auditor, i. 355.  
 sederunt book, i. 39, 40.  
 testamentary trust accounts, i. 41; xii.  
     377.  
 unclaimed dividends, i. 39.  
 unclaimed dividends, liquidations, xii. 185.

ACCOUNTING—  
 by creditor receiving preferences, ii. 21.  
 by curator, iv. 40.  
 by foreign trustees, xii. 345.  
 by heritable creditor, ii. 176.  
 by pro-curator, vi. 43.  
 by suing creditor, i. 4.  
 by tutor nominate, xiii. 18.  
 by vicious intromitter, xiii. 127.  
 prescription, xii. 316.  
 references to accountant of Court, i. 41.  
 to beneficiary, ii. 50.

ACCOUNTING, ACTION OF, i. 42.  
 conclusions, i. 42.  
 defences, denial of liability, i. 43.  
     averment that account settled, i. 43.  
 form of summons, xii. 145.  
 procedure, i. 42.  
 Sheriff Court, xi. 312.

ACCOUNTS—  
 bank, i. 391–396.  
 burgh, iii. 129.  
 cash, iv. 47.  
 county council, iii. 357.  
 curators, iv. 35.  
 current deposit, iv. 47.  
 interest on, vii. 38.

ACCOUNTS—*continued.*  
 joint stock companies, vii. 140.  
 judicial factor, i. 40.  
 law agents, v. 170.  
 liquidator's, xii. 185.  
 parish council, x. 188.  
 payment, ix. 237.  
 prescription, xii. 312–320.  
 printer's, vi. 254; x. 27.  
 taxation of, i. 354, 355.  
 trustee in bankruptcy, i. 39.  
 tutorial, audit of, xiii. 11.  
 water works, xiii. 184.

ACCOUTREMENTS—  
 volunteers, xiii. 138.  
 yeomen, xiii. 230.

ACCRETION, i. 46.  
 infestment, vi. 340.  
 lease, i. 47.  
 legacies, vii. 366, 383, 384; xii. 111, 112.  
 succession, i. 47.  
 superior's infestment, xii. 56.  
 vesting in succession, xiii. 66.

ACCUMULATE SUM. *See* Adjudication  
 for Debt.

ACCUMULATION, i. 50; xii. 110, 111,  
     248.  
 legacies, vii. 394.  
 of prisoners, i. 50.

ACCUSATIONS. *See* False Accusations.

ACCUSED, ix. 108.  
 absence, trial in, i. 17.  
 acquittal of, i. 53; iii. 384; xiii. 60.

ACIDS, THROWING, i. 50.  
 attempt to murder, i. 346, 347.

ACKNOWLEDGMENT—  
 effect of, i. 51.  
 of payment, form, i. 51.  
 stamp, i. 52.

ACQUIESCENCE. *See* Admissions; *Mora*;  
*Rei Interventus*; Taciturnity.

ACQUIRENDA—  
 annuities, i. 234.  
 inhibition, vi. 353; xi. 116.  
 Stamp Acts, xi. 462.

ACQUIRENDA OF BANKRUPT—  
 in *cessio*, i. 53; ii. 55, 366.  
 in sequestration, i. 53; ii. 207; xiv. 1.

ACQUIRENDA OF MARRIED WOMEN.  
*See* *Jus Mariti*; Administration (Husband's right of); and Married Women's Property Act.

- ACQUITTAL. *See* Accused.
- ACRE. *See* Weights and Measures.
- ACT AND COMMISSION. *See* Commission to take Proof.
- ACT AND WARRANT, i. 54, 55. *See* Trustee in Bankruptcy.
- ACT OF ADJOURNAL, i. 53.
- ACT OF ASSEMBLY, i. 55.
- ACT OF GOD. *See* *Damnum Fatale*; *Nautæ, Caupones, Stabularii*.
- ACT OF GRACE, i. 57.
- nature of the debt, i. 58.
  - procedure, i. 58.
  - rate of alment, i. 58.
- ACT OF PARLIAMENT. *See* Statute Law; Parliament; Royal Assent; Desuetude.
- ACT OF SEDERUNT, i. 60; xi. 295.
- desuetude of, iv. 218.
- ACT OF UNION. *See* Union.
- ACT OF WARDING, i. 61.
- ACTIO QUANTI MINORIS*. *See* *Quanti Minoris*; Sale of Goods.
- ACTION. *See* Abandonment of Action; Bars to Action.
- ACTIONS. *See* Defences; Citation; Calling; Entering Appearance; Decree; Pleas in Law; Protestation; Process; Record; Sisting; Summons; Wakening.
- accessory, i. 71; xi. 315.
  - adherence, i. 87, 89.
  - adjudication, i. 70; iv. 232; ix. 286.
  - aliment, i. 202; iii. 204.
  - appearance in, i. 279; i. 280.
  - calling, i. 75.
  - claim for salvage, xi. 84, 86.
  - cognition and sale, i. 72.
  - competitory, i. 70.
  - concourse of, iii. 165.
  - condescendence, i. 74.
  - conjoining of, iii. 202.
  - consistorial, i. 71; iii. 219; xi. 309.
  - constitution, i. 69.
  - constitution and adjudication, i. 246.
  - count, reckoning, and payment, i. 42, 70.
    - continuous accounting, i. 42.  - declarator, xii. 86; i. 69; xi. 313; iv. 119; x. 345, 346.
  - declarator of astriction, i. 344.
  - depending, iv. 198.
  - disclamation of, iv. 246.
- ACTIONS—continued.
- division and sale, iii. 138; iv. 304.
  - division of commony, i. 72, 368; iii. 142; iv. 306.
  - exhibition and delivery, i. 71; v. 150, 151.
  - exoneration and discharge, v. 154.
  - falling asleep, xiii. 145, 146.
  - furthcoming, i. 70, 317; iv. 115; vi. 103.
  - interdict, vii. 24. *See* Interdict.
  - joint, vii. 94.
  - lawburrows, xii. 290.
  - maills and duties, i. 70; iv. 233; viii. 181.
  - maritime actions, i. 71.
  - minute of restriction, x. 312.
  - multiplepoinding, viii. 377. *See* multiple-poinding.
  - petitory, i. 69; ix. 263; xi. 312.
  - popular, ix. 351.
  - possessory, i. 70; ix. 361; xi. 312.
  - proving the tenor, i. 72; x. 79.
  - ranking and sale, i. 72; x. 173.
  - rescissory, i. 69; xi. 313; x. 230.
  - removing, xii. 233–237.
  - supplementary, i. 71.
  - suspension, xii. 206.
  - suspension and liberation, i. 70.
  - right of agent to proceed with, vi. 242.
  - under the Employer's Liability Act, i. 263.
  - vexations, xiii. 119.
- ACTION (NEW)—
- after year and day, i. 15.
  - error in interlocutor, i. 2, 3.
  - minute of abandonment in, i. 3.
- ACTOR, ALTER, i. 85.
- ADEMPTION. *See* Legacy.
- AD FACTUM PRÆSTANDUM*—
- Appeal Circuit Court, i. 256.
  - Appeal to Sheriff, i. 278.
  - Appeal to Court of Session, i. 259; xi. 316.
  - convictions, summary, iii. 285.
  - decree, iv. 126.
  - imprisonment, iv. 126; xii. 218.
  - married women, viii. 297.
  - obligation, ix. 78.
  - Sheriff Court, xi. 312.
- ADHERENCE, i. 87. *See* Action; Husband and Wife.
- to the king's (queen's) enemies, i. 89. *See* Treason.

**ADJOURNMENT**, i. 89. *See* Absence, Trial in.  
 by criminal prosecutor, iii. 380; ix. 316; xiv. 1.  
 in Court of Session, i. 90.  
 in Sheriff Court, i. 90.  
 of Parliament, ix. 127.

**ADJUDGER**, vi. 191. *See* Adjudication, intromission, vii. 51.  
 removing, xii. 234.

**ADJUDICATION**—  
*contra hæreditatem jacentum*, i. 91.  
 declaratory, i. 113.  
 effect of sequestration, xi. 198.  
 for debt, i. 92, 313; iv. 232; vi. 355.  
 against whom, i. 97.  
 competition amongst adjudgers, i. 103; x. 28.  
 completion of titles, i. 105.  
 constitution, i. 96.  
 defences, i. 101.  
 extinction, i. 108.  
 grounds of, i. 95.  
 in what Court competent, i. 98.  
 litigious, i. 99; viii. 125.  
 redemption and expiry of the legal, i. 107.  
 subjects, i. 96.  
 subjects not adjudgeable, i. 97.  
 summons, i. 99.  
 in implement, i. 109; iv. 232.  
 in security, i. 110.  
 of bankruptcy, i. 111.  
 of duty on instruments, v. 136.  
 on a trust bond, i. 112; xii. 56.  
 on a trust disposition, i. 113.  
 on *debita fundi*, i. 112.

**ADJUNCTIO**, i. 113.

**ADJUSTMENT**. *See* Marine Insurance.  
 general average, i. 116, 362.  
 insurable value, i. 114.  
 particular average loss, i. 115.  
 freight, i. 115.  
 goods, i. 115.  
 ship, i. 115.  
 standard of, i. 114.  
 total loss, i. 115.

**ADJUSTMENT OF RECORD**, i. 117.  
*See* Record.

**AD MEDIUM FILUM**, i. 117.

**ADMINICLES**, i. 118. *See* Proving of the Tenor.

**ADMINISTRATION**—  
 husband's right of, i. 118; viii. 301, 304, 305; xiv. 2. *See* *Jus Mariti*; Husband and Wife; Married Women's Property Act.  
 letters of, i. 124. *See* Confirmation of Executors.  
 of small estates, xii. 133.

**ADMINISTRATIVE LAW**, vii. 305.

**ADMINISTRATOR**—  
 appointed by donor, xiii. 2.

**ADMINISTRATOR-IN-LAW**. *See* Administration (Husband's Right of); Tutor.  
 appointment of judicial factor, xiii. 3.  
 bastard children, xiii. 2.  
 caution by, vii. 195, 196; xiii. 2, 22, 23.  
 conflicting interests, xiii. 2.  
 discharges by, iv. 237.  
 expenses of unsuccessful action, xiii. 3, 16.  
 intervention by Court, xiii. 2.  
 maintenance and education, xiii. 4.  
 personal liability of, xiii. 392; xiii. 2, 16, 17, 18.  
 powers and duties, xiii. 3; xiv. 82.  
 procedure for removal, xiii. 22.  
 resignation of, xiii. 3.  
 restrictions, xiii. 2.  
 special powers, xiii. 18.  
 termination of office, xiii. 21.

**ADMIRAL, LORD HIGH**, i. 125.

**ADMIRALTY**—  
 assessor, i. 332.  
 Board of, naval officers, xiii. 256.  
 collisions at sea, xi. 99.  
 criminal jurisdiction, xi. 99.  
 discharge of seamen, xiii. 258.  
 naval savings banks, xi. 92.  
 salvage, xi. 71, 72.  
 Scottish Court of, i. 126; ii. 70.  
 Sheriff Court, i. 128.  
 works on the shore, x. 138.

**ADMISSIONS AND CONFESSIONS**, i. 129.  
 accused's declaration, i. 131.  
 admission on record, i. 130.  
 by agent, i. 132.  
 by partners, ix. 159.  
 extrajudicial admission, i. 130.  
 in criminal cases, i. 131.  
 of paternity, i. 157, 158.  
 judicial admission, i. 129.

- ADMISSIONS AND CONFESSIONS—*continued.*  
 plea of personal bar, i. 132.  
*rei interventus*, i. 132.
- ADMONITION, i. 133; iii. 285; ix. 252.  
*See* Arbitrary Punishment; Criminal Prosecution; First Offenders.
- ADOPTION OF DEEDS, i. 134. *See* Deeds.
- ADSCRIPTI VEL ADSCRIPTITII GLEB.E.*, i. 136.
- ADULTERATION. *See* Food and Drugs Acts; Fertilisers and Feeding Stuffs Act; Medical Officer of Health.
- ADULTERY, i. 137. *See* Divorce.  
 as a crime, i. 139.  
 civil consequences, i. 138.  
 condonation of, iii. 179.
- ADVANCES—  
 legitim, xii. 80.  
 tutor to pupil, xiii. 17.
- ADVENTURE, i. 139. *See* Joint Adventure.
- ADVERTISEMENT, i. 139. *See* Carrier; Contract; Gazette; Offer; Petition.  
 appointment of common agent, iii. 125.  
 augmentation, i. 359.  
 brieve from Chancery, ii. 222.  
 by medical practitioners, xiii. 249.  
 by tramway promoters, xiii. 281.  
 duty, i. 139.  
 for claims, xii. 356.  
 indecent, i. 140; ix. 87.  
 of private bill, x. 35.  
 sale of heritable security, ii. 178; ix. 376.
- ADVERTISING STATION, i. 140. *See* Rating.
- AD VITAM AUT CULPAM*, i. 140.  
 public officials, ix. 92; xii. 282, 285.
- ADVOCATE, i. 141.  
 admission to Faculty, i. 143.  
 private examination, i. 143.  
 public examination, i. 144.  
 as Commissioners, xi. 91.  
 books of sederunt, ii. 193.  
 burying of pleas, ii. 94, 273.  
 counsel for poor, ix. 344.  
 Dean of Faculty, iv. 92.  
 in Aberdeen, i. 150.  
 King's Counsel, x. 127.  
 Lord, i. 152.  
 officials, i. 145.
- ADVOCATE—*continued.*  
*pactum de quota litis*, ix. 105.  
 powers and duties, i. 2, 145; xii. 239.  
 attendance in Court, i. 148; iv. 153.  
 censure of, i. 149.  
 clerks, i. 149; xii. 315.  
 compromising case, iii. 162.  
 confidentiality, i. 147.  
 counsel necessary, i. 147.  
 fees, i. 146; v. 175.  
 liability for incorrect advice, i. 146.  
 mandate, i. 145.  
 privilege, i. 147.  
 Stamp Act, xi. 416.  
 stipendiary magistrate, xii. 15.
- ADVOCATES DEPUTE, i. 149.
- ADVOCATES' LIBRARY, i. 145.  
 officials of, i. 145.
- ADVOCATIO ECCLESIE*, i. 152.
- ADVOCATION—  
 bill of, i. 152.  
 to Court of Justiciary, i. 152. *See* Justiciary Court, Review.  
 to Court of Session, i. 153. *See* Appeal; Suspension.
- AERATED WATER SHOPS, xiv. 61.
- AFFIDAVIT, i. 155.  
 admissible in evidence, i. 156.  
 Appeal, House of Lords, i. 269.  
 Bankers' Books Evidence Act, i. 391.  
 deletions in, iv. 174.  
 erasures in, v. 89.  
 perjury, i. 157; ix. 255.  
 Stamp Acts, xi. 418.  
 where required, i. 156.
- AFFILIATION OR FILIATION, i. 157; x. 4. *See* Bastard; Legitimacy; Parent and Child.  
 children born in wedlock, i. 157.  
 children born out of wedlock, i. 158.  
 defender as first witness, xiv. 30.
- AFFINITY, i. 159; vi. 260.
- AFFIRMATION, i. 161. *See* Oath.  
 by witnesses, i. 345; ix. 62; xiii. 216.  
 in lieu of oath, ix. 61.  
 members of Parliament, ix. 128.  
 perjury, ix. 255.
- AFFREIGHTMENT. *See* Charter-Party; Bill of Lading.
- AGE, i. 162.  
 limit for whipping, xiii. 189.  
 of witnesses, xiii. 206.

AGENT, AGENCY. *See* Partnership; Powers and Duties; Power of Attorney; Principal and Agent; Liability; Remuneration; Law Agent; Stock-broker.  
 appointment of, i. 164.  
 as defender, iv. 160.  
 authority of, i. 166.  
 bank, i. 387-389.  
 bankruptey of, x. 25.  
 bills of exchange by, ii. 90.  
*bonâ fide*, ii. 163, 164.  
 breach of trust, ii. 215.  
 common, i. 359; iii. 124.  
 consignments, iii. 218.  
 Crown, iv. 6.  
 definition, i. 163.  
*del credere*, i. 168.  
 delegation, i. 167.  
 duties, i. 167.  
 election, iii. 321-344; viii. 388; ix. 132.  
 for poor, i. 170. *See* Poor's Agent.  
 indemnity, i. 168.  
 insanity of, x. 25.  
 life insurance, viii. 96.  
 notice of dishonoured bill, ii. 100.  
 oath in bankruptey, ix. 59.  
 patent, vii. 25.  
 payments, ix. 236.  
 ratification, i. 165.  
 relation of principal with third parties, i. 169.  
 remuneration, i. 168.  
 reparation, x. 301.  
 sale of heritage, xi. 7-9.  
 signature of, ii. 230.  
 stoppage *in transitu*, xii. 24.  
 sub-, x. 17.  
*ultra vires*, i. 165.  
 termination, i. 169.  
 wife, i. 164.

AGGRAVATION OF CRIME. *See* Crime.  
 dishonesty, i. 171.  
 indecency, i. 171; x. 176.  
 malicious mischief, viii. 194.  
 previous conviction of a similar offence, i. 171.  
 statutory or special, i. 171.  
 violence, i. 171; x. 176.

AGNATE, i. 172.  
 custody of insane person, xiii. 26, 27.  
 declining tutorship, xiii. 25, 26.

AGREEMENT, i. 172. *See* Contract; Consent; Essential Error; Fraud; Offer and Acceptance; Promise; Restraint of Trade.  
 armistice, i. 306.  
 by partner, ix. 158.  
 compromise, iii. 162.  
 joint stock companies, vii. 113, 117, 121.  
 not to enforce obligation, ix. 104.  
 parole evidence, ix. 142, 143.  
 penalty clause, xiii. 257.  
 sale of goods, xi. 24.  
 salvage, xi. 84.  
 Stamp Acts, xi. 418.  
 with crew, xi. 104.

AGRICULTURAL HOLDINGS (SCOTLAND) ACTS—  
 application of, i. 173.  
 compensation for improvements, i. 173; xiv. 2.  
 classification of improvements, i. 175.  
 Crown lands and limited owners, i. 180.  
 "drainage" and "temporary," i. 176.  
 excluding clauses, i. 177.  
 executed prior to the Act, i. 177.  
 permanent, i. 173.  
 power to charge, i. 178.  
 purchase of, by incoming tenant, i. 178.  
 reductions and deductions, i. 177.  
 under the Act exclusive, i. 178.  
 how far compulsory, i. 173.  
 law affected, i. 173.  
 miscellaneous provisions, i. 179.  
 bequest of lease, i. 179.  
 fixtures, i. 180.  
 removing for non-payment of rent, i. 179.  
 termination of tenancy, i. 179.  
 object of legislation, i. 172. *See* Lease.  
 procedure, i. 180; xiv. 2.  
 procedure, order under a reference, i. 181.  
 appointment of oversman, i. 183.  
 appointment of referees, i. 182.  
 award, i. 183.  
 conduct of referee, i. 183.  
 notice of claim, i. 181.  
 value of fixtures, i. 184.  
 procedure before Sheriff, i. 184.  
 appeal against award, i. 184.  
 incidental applications, i. 184.  
 petition to charge, i. 185.

- AGRICULTURAL HOLDINGS (SCOTLAND) ACTS—*continued.*  
 procedure before Sheriff—*continued.*  
     removing for non-payment of rent, i. 185.  
     validity of bequest of lease, i. 185.
- AID, EXTENT IN. *See* Extent.
- AIR, POLLUTION, ix. 40.
- ALBA FIRMA*, i. 185.
- ALIAS*, i. 185.
- ALIBI*, i. 186.
- ALIEN, ALIENS, i. 186; viii. 395. *See* Denizen.  
     as partners, ix. 155.  
     as witness, i. 191; xiii. 212.  
     attempt to murder, i. 347.  
     bankruptcy of, i. 191.  
     by birth, i. 186.  
     by choice, statutory, i. 187.  
     by separation of crowns, i. 187.  
     by separation of territory, i. 187.  
     civil rights, i. 190.  
     enemy, i. 190; xiii. 151.  
     foreign ambassadors, i. 186.  
     Franchise, vi. 51.  
     incapable of being tutors, xiii. 5.  
     political rights, i. 189.  
     right to courtesy, iii. 372.  
     status, rights, and disabilities of residence, i. 188.  
     succession, xii. 74.  
     title to snc, xii. 268; xiv. 40.
- ALIENATION—  
     by bankrupt or insolvent, i. 191; vii. 7, 12.  
     for alienation of heritage. *See* Burgage; Disposition; Fen-Charter; Entails.  
     in defraud of diligence, iv. 235.  
     restraints on, iii. 175.
- ALIMENT, i. 192; ii. 40.  
     arrestment of, i. 313, 314.  
     by stranger, iv. 340-346.  
*ex jure representationis*, i. 198.  
     how payment enforced, i. 192.  
     illegitimate children, i. 195; xii. 280.  
         duration of mother's relief from father, i. 196.  
         duration and amount of child's claim, i. 197.  
     imprisonment for, i. 193; vi. 258; xii. 218.  
     in bankruptcy, i. 203; ii. 54; xi. 253.
- ALIMENT—*continued.*  
     jurisdiction in questions of, i. 202, 203; xi. 309.  
     legitimate descendants—duration of obligation, i. 194; xiv. 3.  
     mode in which obligation implemented, i. 195.  
         *quantum* of, i. 194.  
     of brothers and sisters, i. 192, 198.  
     of dependents by judicial factor, vii. 190, 203.  
     of dependents by tutor, xiii. 10, 21.  
     of ffar by liferenter, i. 202.  
     of poor prisoners, i. 57.  
     of posthumous child, ix. 365.  
     of pupil, vii. 183; xiii. 21.  
     of son's widow, i. 192.  
     of wife's parents, i. 238.  
     repayment of, i. 193.  
     stepfather's liability for, i. 192.  
     stepmother's liability for, i. 192.  
     wife's claim, i. 200; xiv. 3.  
         after divorce, i. 201.  
         after judicial separation, i. 201; vii. 218.  
*pendente litii*, i. 200.  
     widowhood, i. 202; xii. 84.  
     wife's liability for, i. 192.
- ALIMENTARY INTEREST, i. 204; xiv. 3.  
     arrestment of, i. 313, 314.  
     discharge of, xii. 125.
- ALIOQUI SUCCESSURUS*, i. 206.
- ALKALI WORKS, i. 206.
- ALLEGIANCE, i. 207.  
     oath of, i. 207.
- ALLENARLY, i. 207.
- ALLIES, FIGHTING AGAINST THE KING'S, i. 208.
- ALLOCATION—  
     of church seats, xi. 127-132. *See* Church.  
     of conquest, iii. 213.  
     of feu-duty, xii. 33.
- ALLODIAL, i. 208.
- ALLONGE. *See* Bills of Exchange.
- ALLOTMENT OF SHARES, vii. 120.
- ALLOTMENTS, i. 209.  
     by parish council, ix. 120.
- ALLOWANCE OF AN APPRIZING. *See* Adjudication for Debt.
- ALLUVIO, i. 210.
- ALTERATION—  
     bills of exchange, ii. 108.  
     cautionary obligations, ii. 342.

- ALTERATION**—*continued.*  
 county boundaries, xi. 120.  
 fire insurance, v. 341.  
 holograph will, xiii. 197.  
 unsigned pencil, ii. 283.
- ALTERNATIVE (OR, A ME VEL DE ME)**  
 HOLDING. *See* Disposition.
- ALTIUS NON TOLLENDI**, i. 210.
- ALVEI MUTATIO**, i. 211.
- AMALGAMATION**. *See* Company.  
 of friendly societies, vi. 80.  
 of railways, x. 171.
- AMAND**, i. 211.
- AMBASSADORS**—  
 British, i. 186.  
 children of, i. 213.  
 foreign, i. 212.  
 domicile of, i. 213.  
 privileges, i. 212.
- AMENDMENT**, i. 214.  
 of complaint, iii. 391; ix. 317.  
 of election petition, v. 2.  
 of election petition (municipal), v. 15.  
 of note of suspension, xii. 215.  
 of record, i. 71, 216, 219; x. 227;  
     xiv. 4.  
 addition to numbers of pursuers or  
 defenders, i. 218.  
 defended action, i. 216.  
 expenses of, i. 218.  
 for interest, ix. 286.  
 limitation of powers, i. 217.  
 minute of, i. 71.  
 pleas in law, ix. 278.  
*res noviter*, x. 313.  
 restriction of summons, i. 218.  
 when competent, i. 218.
- of summons, xii. 148–150.  
 of the libel, i. 215; iii. 391.  
 of verdict (criminal), xiii. 59.
- Parliamentary procedure, i. 215.  
 public meetings, i. 214.
- A MENSA ET THORO**, i. 220.
- AMERICA**—  
 breach of promise of marriage, ii. 213.
- AMERICAN SECURITIES**—  
 income tax, vi. 295, 296.
- AMICUS CURIAE**, i. 221.
- AMMUNITION**, i. 221.  
 exportation of, v. 181.
- AMOTIO**, i. 221. *See* Robbery.
- ANALYSTS, APPOINTMENT OF**, xi. 58.
- ANATOMY ACTS**, i. 222.
- ANCESTOR**, i. 222.  
 creditors of, xii. 56, 57.
- ANCESTOR'S DEBTS**, i. 206.
- ANCHORING**—  
 right to use shore, xi. 100.
- ANCHORS AND CHAIN CABLES ACT**,  
 1899, xiv. 4.
- ANCIENT MONUMENT PROTECTION**  
 ACT, xiv. 5.
- ANIMALS**—  
 carriage of, ii. 303.  
 cruelty to, iv. 11–16; vi. 110, 113.  
 diseases of, iii. 243; xiv. 26.  
 ferocious, ix. 2.  
 liability for damage caused by, xi. 304.  
     by dangerous, i. 223.  
 property in, and theft of wild, i. 225.  
*See* Game Laws.
- ANN OR ANNAT**, i. 226.
- APPORTIONMENT ACT**, i. 284.
- payable out of all stipends, i. 227.
- title to, i. 228.
- ANNEXATION**, i. 228.
- annexed patrimony of the Crown, i. 228.  
 of church lands to the Crown, i. 229.  
 of lands *quoad sacra*, i. 229.
- ANNUAL MEETINGS**. *See* Meetings.
- ANNUALRENT**, i. 229.
- ANNUALRENT RIGHT**, i. 230.  
 infestment of, i. 230.
- ANNUITY, ANNUITIES**, i. 230; xiv. 97.  
*See* Annualrent Right.
- acquirenda, i. 234.
- alimentary, i. 233; xii. 358, 359.
- APPORTIONMENT ACT**, i. 284.
- arrestment, i. 233, 314.
- bankruptcy, i. 234; xi. 189, 220.
- bond of entail, terce, xii. 243.
- cautioner for, i. 235; xi. 189.
- death duties, i. 236.
- definition, i. 230.
- do not affect legacies vesting, i. 234.
- government, ix. 367.
- heritable in their nature, i. 233.
- income tax, i. 235; vi. 286, 295.
- instruments constituting, i. 231; ii. 182.
- judicial factor purchasing, vii. 187.
- legacy of, xii. 109.
- liability for, xii. 127, 129.
- of teinds, i. 236.
- sale of, i. 233.

**ANNUITY, ANNUITIES—*continued.***

schoolmasters', i. 224; xii. 226.  
securities for, i. 232.  
Stamp Act, i. 235.  
trustees must first provide for, xii. 358.  
tutor purchasing, xiii. 10.  
where income insufficient, i. 233; xii.  
358.

wife purchasing, xiv. 2.  
with right to burden or dispose, i. 233.

***ANNUS DELIBERANDI*, i. 237, 243.*****A NON DOMINO*, i. 238.*****A NON HABENTE POTESTATEM*, i. 238.****ANSWER, i. 238.**

proof before, ii. 45.  
to note of suspension, xii. 206, 218.  
to petitions, ix. 262.

**ANTENUPTIAL CONTRACT OF MARRIAGE. *See* Marriage-Contract.****ANTENUPTIAL DEBTS OF A MARRIED WOMAN, i. 238.**

debts contracted after proclamation, i.  
240.  
effect of change on wife's domicile, i. 241.  
husband should be called, i. 239.  
husband's bankruptcy, i. 241.  
husband's liability after dissolution, i. 241.  
liability for wife's shares, i. 240.  
liability of husband, i. 239, 241.  
liability of husband before 1878, i. 241.  
reference to oath of husband, i. 240.  
wife's estate liable, i. 239.  
wife's heritable debts, i. 240.  
wife's liability for, i. 239.

**ANTINOMY, i. 242.*****APOCHA TRIUM ANNORUM*, i. 242.****APOLOGY, i. 243.****APOTHECARIES, xiii. 247, 248.**

charter of incorporation, xiii. 247.  
examination, xiii. 247.  
Pharmacy Acts, ix. 264.  
penalties, xiii. 247.  
sale of poisons, ix. 303.

**APPARENT HEIR, i. 243. *See* Heir.****APPEALS—**

against assessment of income tax,  
vi. 284, 303.  
against assessment of poor rates, ix. 333.  
against decisions of Commissioners of  
Inland Revenue, v. 106.  
reponing in, x. 307.

**APPEALS—*continued.***

to Court of Session, i. 258; x. 299.  
*See* Boxing; Printing.

against imprisonment for debt, vi. 258.  
competing petitions for service, xii. 300.  
contempt of Court, iii. 256.

Debts Recovery Court, iv. 114.

Finance Act, v. 320.

for removal of process, i. 262; xiv. 6.

jury trial, i. 262; vii. 240; xii. 300.  
on ground of contingency, i. 263;  
vi. 309; xii. 299.

under 1877 Act, i. 263.

for removal under Employers' Liability  
Act, 1880, xii. 300.

for review, i. 259; xiv. 6.

from Dean of Guild Court, iv. 96.

from Debts Recovery Court, iv. 115.

from Justice of the Peace Court,  
vii. 269.

from Lyon Court, i. 307.

from Sheriff of Chancery, i. 247; ii. 24.

in *cessio*, ii. 374.

in sequestration, xi. 177, 198, 226, 242-  
246.

kenning to the terce, xii. 243, 244.

remit to Sheriff, i. 262, 263; xiv. 7.

review where incompetent, i. 264;  
xiv. 6.

under Workmen's Compensation Act,  
xiii. 224.

value limit, i. 259.

to High Court of Justiciary, i. 264;  
xiv. 6, 7.

expenses, i. 266.

petition for bail, i. 373-376.

Small Debt Court, xi. 360.

summary prosecution, iii. 392.

to House of Lords, i. 266; xiv. 7.

competency, i. 267.

costs, i. 272.

death or bankruptcy of party, i. 272.

entering appearance, i. 270.

finding in fact, i. 268.

leave to appeal, i. 267, 270; vii. 41.

lodging prints, i. 271.

pauper, i. 272; ix. 350.

petition to apply judgment, i. 273.

procedure, i. 269.

security for costs, i. 270.

setting cause for hearing, i. 272.

time allowed, i. 267.

**APPEALS—continued.**

- to Quarter Sessions, i. 273; iii. 392.
- appellant, i. 274.
- caution and consignation, i. 275.
- citation of witnesses, i. 275.
- Court to which taken, i. 274.
- hearing and judgment, i. 276.
- interim liberation, i. 275.
- manner, i. 274.
- service, i. 275.
- time of taking, i. 274.
- use in practice, i. 273.
- withdrawing, i. 275.
- to Sheriff — against final judgment, i. 277.
- agricultural references, i. 184.
- contempt of Court, iii. 256.
- Debts Recovery Court, iv. 114.
- Finance Act, v. 329.
- in cassio, ii. 374.
- judgments appealable, i. 278.
- leave to appeal, i. 278.
- to the Circuit Court—
  - civil jurisdiction, i. 253; iii. 21.
  - corruption, etc., i. 256.
  - Court in which taken, i. 255.
  - grounds of appeal, i. 256.
  - incompetency, i. 257.
  - judgments appealable, i. 255.
  - procedure, i. 258.
  - time of taking, i. 256.
  - use in practice, i. 255.
  - wilful deviation, i. 257.
- criminal jurisdiction, i. 248; iii. 392.
- appellant, i. 249.
- certifying to High Court, i. 254.
- Court in which taken, i. 249.
- Court to which taken, i. 249.
- expenses, i. 254.
- finality, i. 255.
- finding caution, i. 251.
- grounds of, i. 250.
- hearing, i. 253.
- interim liberation, i. 252.
- judgment, i. 254.
- judgments appealable, i. 249.
- lodging with clerk, i. 252.
- manner of taking, i. 250.
- objections to competency, i. 253.
- proof of service, i. 252.
- service, i. 251.
- time of taking, i. 249.

**APPEALS—continued.**

- to the Cirenit Court—*continued.*
- criminal jurisdiction—*continued.*
  - use in practice, i. 248.
  - withdrawing, i. 252.
- APPEARANCE—**
  - entering (Court of Session), i. 279.
  - count, reckoning, and payment, i. 42.
  - decree in absence, i. 14.
- entering (House of Lords), i. 270.
- entering (Sheriff Court), i. 280; xii. 265.
- withdrawal of, i. 16.
- APPELLANT.** i. 280.
- absence of, i. 18.
- APPENDIX TO LIBEL.** *See Libel; Indictment; Inventory.*
- APPLICATION OF STATUTORY PENALTIES,** ix. 249.
- APPOINTMENT.** *See Curator; Trustee; Tutor; Judicial Factor; Agent; Law Agent.*
  - of accountant of Court, i. 39.
  - of auditor, Court of Session, i. 353.
  - of auditor, Sheriff Court, i. 355.
  - of auditor, company, vii. 140.
  - of arbiter, i. 294.
  - of assessor, x. 177.
  - of broker, ii. 227.
  - of chairman. *See Chairman.*
  - of chancellor, ii. 383.
  - of chief constable, iii. 2, 4.
  - of clerk. *See Clerk.*
  - of constable, iii. 233, 235.
  - of dean of guild, iv. 92.
  - of depute. *See Depute.*
  - of executor. *See Executor.*
  - of inspectors. *See Inspector.*
  - of judge, i. 140.
  - of justice of the peace, vii. 265.
  - of law agent, vii. 315.
  - of mace, viii. 179.
  - of minister. *See Minister.*
  - of notary public, vii. 308, 313; ix. 23, 32.
  - of procurator-fiscal, x. 58.
  - of registrar of friendly societies, x. 239.
  - of town clerk, xii. 281.
  - of collector of poor rates, ix. 331.
  - of county officials, iii. 352.
  - of inspector of poor, ix. 327.
  - of interim officers, ii. 71.
  - of interim Sheriff clerk, xiii. 276.
  - of medical officer of health, viii. 315, 316.

APPOINTMENT—*continued.*

of public health officers, x. 91.  
power of, i. 281; viii. 287–292; xii. 101–103.  
power after divorce, i. 282.  
cannot restrict fief to a different, xiv. 7.  
by trustees, xiii. 90.  
to confess or deny, i. 283.

## APPORTIONMENT ACT, i. 284; vi. 93.

Ann, i. 228.  
bonuses, ii. 190.  
capital and income, ii. 289.

## APPRAISER, i. 285.

APPREHENSION ON CIVIL DILIGENCE. *See* Civil Imprisonment.

## APPREHENSION—

of debtor *meditatione fugae*, vii. 223.  
of witness, xiii. 205.  
under small debt decree, xi. 358. *See*  
Backing a Warrant.  
of criminal, i. 285; x. 73. *See* Extradition.  
warrant, xiii. 159.  
of a criminal without written warrant, i. 285.  
for examination, i. 286.  
for trial, i. 287.  
procedure at, i. 288.  
legal advice, i. 288.  
warning notice, i. 288.

## APPRENTICE, i. 289; ix. 378.

cautioners for, i. 289; xi. 360.  
chastisement of, i. 290, 330; xiii. 189.  
desertion of service, iv. 212.  
disobedience of, i. 290.  
enlisting, i. 290; v. 25.  
indenture, vi. 316.  
jurisdiction of Small Debt Court, xi. 359.  
to advocates in Aberdeen, i. 151.  
to chimney sweepers, iii. 6.  
to law agent, vii. 308, 324.  
ship salvage, xi. 84.  
to surveyor, xii. 203.  
to Writers to the Signet, xiii. 227, 228.  
Stamp Acts, xi. 422.

APPRISED. *See* Adjudication for Debt.APPROBATE AND REPROBATE. *See* Election.APPROBATORY AND IMPROBATORY ARTICLES. *See* Reduction, Abiding by.APPROPRIATION OF INDEFINITE PAYMENTS. *See* Payments (Indefinite).

## APPROPRIATION, DISHONEST, OF PROPERTY, i. 292.

*APUD ACTA*, i. 292.*AQUÆDUCTUS*, i. 292.*AQUÆHAUSTUS*, i. 292.*AQUILIAN LAW*, i. 293.

ARAGE, i. 294.

ARBITER, i. 294. *See* Arbitration.

as witness, i. 295, 303; xiii. 213.

fees of, v. 178.

interested, vii. 35.

judge as, i. 295.

prejudging, xiv. 7.

unnamed, i. 300.

## ARBITRARY PUNISHMENT, i. 296.

## ARBITRATION, i. 297.

ancillary submissions, i. 299.

award in, i. 301, 368.

citation of witnesses, xiii. 205.

clause, xiv. 7.

clerk's fees, xii. 315.

date fixed for award, xiv. 8.

decree arbitral, i. 301.

deed of submission, i. 298.

judicial reference, i. 304.

jurisdiction of Court, xiv. 8.

oversman, ix. 101.

prescription, xiii. 314.

privileged writings, x. 47.

procedure in submissions, i. 300.

questions of law, i. 296.

reduction of award, i. 296, 301.

reference to unnamed arbiter, i. 300.

submission by trustees, xii. 361, 363.

statutory, i. 304.

under Coal Mines Regulation Act, iii. 73, 77.

Lands Clauses Acts, vii. 288, 289, 355.

Railway Companies Arbitration Act, x. 171.

under Workmen's Compensation Act, 1897, xiii. 224.

Savings Bank disputes, xi. 91.

ARCHITECTS. *See* Surveyor.

## AREAS, iii. 133.

unhealthy, vi. 237.

ARLES. *See* Earnest.

## ARMISTICE, i. 306.

- ARMORIAL BEARINGS; ARMORIAL ENSIGNS; ARMS; COAT, ARMORIAL; COAT OF ARMS; HERALDIC COGNIZANCES, i. 306; ii. 33. reduction, i. 308.
- Stamp Acts, xi. 445.
- ARMORIAL ENSIGNS—  
of the United Kingdom of Great Britain (and Ireland), i. 308. *See* Flag; Seal.
- ARMY, i. 308.  
arrestment of pay, i. 313.  
billetting, ii. 136.  
commission in the, iii. 105; xi. 432.  
courts martial, iii. 369.  
desertion, iv. 208.  
dismissal from, iv. 250.  
enlistment, v. 23.  
furlough, iv. 209.  
impressment of carriages, vi. 255.  
militia, viii. 334.  
Military Lands Act, viii. 331; (1983) xiv. 54.  
mutiny, viii. 394.  
rating buildings, x. 183.  
reserve forces, x. 314.  
volunteers, xiii. 137.  
yeomanry, xiii. 229.
- ARRANGEMENT, DEED OF. *See* Deed of Arrangement; Sequestration.
- ARREARS—  
crofters' rents, iii. 396.  
of annuity, i. 233.  
of feu-duty, v. 294; vii. 37; xii. 165, 167.  
of interest, vii. 36.  
of rent, vii. 37.  
of salary, xiv. 81.  
succession in, xii. 42.
- ARREST, i. 285. *See* Apprehension of Criminal.  
of criminal. *See* Backing a Warrant.  
on civil diligence. *See* Civil Imprisonment.
- ARRESTER, ARRESTEES. *See* Arrestment and Furthcoming.
- ARRESTMENT AND FURTHCOMING, i. 310; iv. 233; xiv. 44. *See* Diligence; Sale.  
nature of arrest, i. 310.  
warrant, i. 310, 321.  
subjects arrestable, i. 312.
- ARRESTMENT AND FURTHCOMING—  
*continued.*  
subjects not arrestable, i. 314.  
in whose hands arrestments made, i. 315; xiv. 8.  
effect of arrestment, i. 316.  
effect of appeal to House of Lords, i. 311, 316, 317.  
effect of trust deed for creditors, xii. 398.  
ineffectual arrestments, i. 312, 315, 316.  
breach of arrestment, i. 317.  
furthcoming, i. 317; vi. 110; xi. 358.  
competition of arrestments, i. 318; xiv. 8.  
competition between arresters and assignees, i. 318.  
loosing of arrestments, i. 320.  
recall and restriction, i. 318; x. 222.  
wrongous use, i. 320.  
prescription, i. 320.  
Small Debt Court, xi. 354.  
to found jurisdiction, i. 317, 321, 322; vi. 43, 45, 234; xiv. 8.  
execution of, xii. 147.  
death of defender, i. 322.  
prescription, xii. 313.
- ARRHE, ARRE, ARRABO, i. 323.
- ARRIAGE AND CARRIAGE, i. 323.
- ARROGATION. *See* Adrogation.
- ARSENIC. *See* Poison.  
sale of, xi. 64.
- ARSON, i. 324.
- ART AND PART, i. 85.
- ARTICLED CLERK, i. 324.
- ARTICLES—  
improbatory and approbatory. *See* Reduction, Abiding by.  
Committee of, Lords of the, i. 324.  
of association. *See* Companies.  
of roup, i. 325. *See* Auction.  
parole evidence not admitted, ix. 142.  
of war. *See* Army.
- ARTIFICIAL CHANNELS, xiii. 171, 177.
- ARTILLERY AND RIFLE RANGES, i. 326.
- ARTIZANS' AND LABOURERS' DWELLINGS. *See* Housing of the Working Classes.
- ASCENDANTS, i. 327. *See* Succession.  
alimenting of, i. 198.
- ASLEEP. *See* Wakening, Admissions and Confessions.  
criminal law, i. 327.

- ASSASSINATION, i. 327.
- ASSAULT, i. 327.
- aggravated, i. 328, 329.
  - aggravations, i. 328, 329.
  - civil liability for, i. 329.
  - indecent, i. 328.
  - solatium* for, xi. 366.
  - spitting, i. 327.
  - stabbing, i. 328.
  - throwing acids, i. 328.
  - throwing dirt, i. 327.
- ASSEMBLY, GENERAL. *See* Church Courts.
- ASSENT, ROYAL. *See* Royal Assent.
- ASSESSMENT. *See* Rating.
- ecclesiastical, xiv. 27.
- ASSESSOR—
- burgh, x. 177, 270; xiv. 72.
  - county, i. 330; iii. 352; x. 177, 270.
  - Dean of Guild Court, i. 333.
  - income tax, vi. 265.
  - railways and canals, i. 331; ii. 270; x. 177; xiv. 9.
  - to a judge, i. 332.
  - Admiralty actions, i. 332.
  - Employers' Liability Act, i. 332.
  - nautical, i. 332.
  - patents, designs, and trade marks, i. 332.
  - railway inquiries, i. 332.
  - salvage disputes, etc., i. 332.
- ASSETS, i. 333.
- joint stock companies, vii. 163-167.
- ASSIGNATION, i. 333.
- assignatus utitur jure auctoris*, i. 340.
  - by creditors to bankrupt, ii. 21.
  - by delivery order, iv. 187.
  - by tutors nominate, xiii. 14.
  - blanks in, xiii. 198.
  - conflict of laws, i. 338.
  - effect of, i. 336.
  - form of deed, i. 333.
  - intimation of, i. 334.
  - to cautioner, iv. 239.
  - judicial, i. 336.
  - of annuities, i. 233.
  - of bills of exchange, i. 335, 336; ii. 104.
  - of bond and disposition and security, i. 339; ii. 180.
  - of bonds (moveable), ii. 171.
  - of book debts, xi. 141.
  - of claim for reparation, x. 286.
- ASSIGNATION—*continued*.
- of contracts, i. 337.
  - of copyright, iii. 296, 311.
  - of extract decree, xi. 357.
  - of feu duties, xii. 167.
  - of fire policy, v. 333.
  - of fund in bank, i. 383.
  - of hypothec, vi. 246.
  - of indenture, W.S., xiii. 228.
  - of *jus crediti*, iv. 296; vii. 247.
  - of leases, i. 338.
  - of legacy, i. 334.
  - of life policies, viii. 100.
  - of mails and duties, viii. 187.
  - of maritime lien, xi. 108.
  - of patents, designs, and trade marks, i. 338; xii. 291.
  - of partnership rights, ix. 159, 167, 169; xi. 148.
  - of personal titles to land, iv. 289-296.
  - of real money burdens, ii. 243.
  - of rents, i. 339; ii. 175; v. 310, 263.
  - of salvage, xi. 84.
  - of shares in company, i. 338.
  - of title to sue, xii. 278, 279.
  - of writs, i. 339; ii. 176; v. 308.
  - preferred and deferred to arrestments, i. 316, 318.
  - requiring no intimation, i. 336.
  - transfer without deed, i. 335.
  - warrantice, i. 337; ii. 171.
- ASSIGNEE, i. 341; iv. 239. *See* Assignment.
- accession to trust deed, i. 29.
  - arrestments, i. 318.
  - claims in sequestration, xi. 189.
  - dispositions absolute, xii. 332.
  - terce, xiii. 69.
  - title to sue, i. 337; xii. 278, 279.
- ASSISTING PRISONER TO ESCAPE, i. 341. *See* Art and Part.
- ASSIZE. *See* Jury Trial.
- ASSOILZIE, i. 341. *See* Decree.
- ASSUMED TRUSTEES i. 341. *See* Assumption of Trustees; Trustees.
- ASSUMPTION—
- of thirds, i. 342. *See* Teinds.
  - of trustees, i. 342. *See* Trust; Trustees.
- ASSURANCE i. 343. *See* Accident Insurance; Insurance; Fire Insurance; Life Insurance; Maritime Insurance.
- industrial companies, vi. 87. *See* Company.

**ASSURANCE—*continued.***

Married Women's Policy of Assurance (Scotland) Act, 1880.

**ASSYTHMENT, i. 343.****ASTRICKTION, i. 344.****ASYLUM—**

lunatic, viii. 169–176; x. 206.

**ATHEISM, i. 344.****ATTAINDER, i. 345.****ATTEMPT—**

to commit crime, i. 345. *See* Crime.

to commit malicious mischief, viii. 194.

to murder, i. 346.

by acid throwing, i. 50.

to steal, xii. 247.

**ATTENDANCE AT SCHOOL.** *See* Education.**ATTESTOR, i. 347.****ATTORNEY, i. 348.**

at law, i. 348.

power of, ix. 373.

to take sasine, i. 348.

**AUCTION OR ROUP, i. 349; xiv. 9.****AUCTION—**

articles of roup, i. 325.

bidding at sale, i. 349–352; xiv. 9.

beneficiary, i. 351; x. 117.

proprietors *pro indiviso*, i. 326; xiv. 9.

buying of bidders, i. 351, 352.

marts, v. 248.

puffer, x. 117.

sale of goods by, xi. 52, 55.

sale of heritage, xi. 16.

**AUCTIONEER, i. 352.** *See* Appraiser.

bidding for exposur, i. 351.

licence, i. 352.

where licence unnecessary, i. 352.

warrants his authority, xiv. 63.

**AUCTOR IN REM SUAM, i. 352.****AUDIT—**

company accounts, vii. 140.

county council accounts, iii. 357.

factory accounts, i. 40, 41.

parish council accounts, ix. 115.

testamentary trust accounts, i. 41.

tutorial accounts, xiii. 11.

trustee in bankruptcy accounts, i.

**AUDITOR—**

of companies, xiv. 43.

Court of Session, i. 353–355.

interim, i. 354.

**AUDITOR—*continued.***

Court of Session—*continued.*

liquidations, xii. 185.

in Sheriff Court, i. 355.

joint stock companies, vii. 140; xiv. 43.

remit to, xii. 224.

**AUDITOR'S REPORT—**

approval of, xii. 225.

decree in absence, i. 15.

objections, xii. 223, 224.

**AUGMENTATION, i. 355–361; xii. 14.**

chalder, ii. 377.

defenders, i. 357.

intimations, i. 357, 358.

messenger-at-arms' certificate, i. 358.

newspaper notice, i. 359.

Presbytery clerk's certificate, i. 358.

precentor's certificate, i. 358.

requisite certificates, i. 358.

summons of, i. 356.

**AUTHENTICATION OF DEEDS.** *See* Deeds.**AUTHOR, i. 361.** *See* Ancestor.

authorship. *See* Copyright.

**AUTHORITY.** *See* Appointment: Powers.**AUXILIARY FORCES.** *See* under Army—Militia, Volunteers, Yeomanry.**AVAIL OF MARRIAGE, xii. 158.** *See* Casualties of Superiority.**AVAL, i. 362.** *See* Bill of Exchange.**AVERAGE.** *See* Marine Insurance; Adjustment; Salvage.

general, i. 362.

leading principle of general average, i. 365. expenditure grounding a claim to contribution, i. 364.

contribution from cargo, i. 364.

remedies given to claimant, i. 366.

where no claim to contribution, i. 364.

particular, i. 364.

**AVERMENT, i. 367.****AVERSIO, i. 367.** *See* Sale.**A VINCULO OR A VINCULO MATRIMONII, i. 367.****AVIZANDUM, i. 367.****AVULSIO, i. 368.****AWARD, i. 301, 368.** *See* Arbitration.

Stamp Acts, xi. 423.

under Land Clauses Acts, vii. 299.

under Agricultural Holdings (Scotland) Act, i. 183, 184.

- "B" CONTRIBUTORY AND LIST. *See* Company.
- BACK-BOND, i. 368; xi. 12, 145. *See* Disposition, Absolute.
- constituting trust, xii. 331, 332.
- effect of bankruptcy, ii. 9.
- effect of recording, i. 22; xi. 12.
- lost, xii. 335.
- retention, x. 332.
- BACK-LETTER—
- with bond and disposition in security, ii. 179.
  - with transfer of shares, ii. 149.
- BACK-TACK. *See* Wadset.
- BACKING A WARRANT, i. 369. *See* Fugitive Offenders; Extradition.
- form, i. 371.
- Scotland and Channel Islands, i. 370.
- Scotland and Ireland, i. 370.
- Scotland, England, and Wales, i. 370.
- within Scotland, i. 369.
- BAIL, i. 371; iii. 380; xiii. 160–162.
- cautioner for, ii. 351.
- form of application, i. 375.
- form of bond, i. 376.
- liberation after trial commenced, i. 374.
- forms of appeal, i. 376.
- when cautioner discharged, i. 375.
- BAIL-BOND, i. 17; vi. 94, 95.
- BAILIARY, LETTER OF, i. 376. *See* Baron.
- BAILIE, i. 377; xi. 252. *See* Magistrate.
- election of, i. 377; ii. 262.
- of Holyrood, i. 377.
- to give sasine, i. 377.
- BAIRNS, i. 377.
- BAIRNS' PART OF GEAR. *See* Legitim.
- BAKEHOUSES, v. 214; viii. 319.
- employment in, v. 224.
  - underground, xiv. 33.
- BALANCE-SHEET. *See* Accounts.
- joint stock companies, vii. 140.
- BALLOT OR SECRET VOTING—
- Ballot Act, i. 378. *See* Elections.
- BANISHMENT, i. 379.
- BANK. *See* Cheque; Banker's Lien; Savings Bank.
- banker, i. 379.
- appropriation of money paid, i. 381.
- arrestments, i. 315.
- balance of books, i. 386.
- bankruptcy of, i. 380, 389.
- BANK—*continued*.
- bearer bonds, ii. 44.
  - bills of exchange, ii. 76.
  - bond for cash credit, ii. 183.
  - Books Evidence Act, 1879 (42 Vict. c. 11); i. 390.
  - circular notes, iii. 21.
  - countermand of cheques, i. 383.
  - Current Deposit Act, iv. 47.
  - customer's death, i. 382, 383.
  - customer's docquet, i. 386.
  - effect of docquet, i. 386.
  - draft, iv. 356.
  - duty towards customer's acceptance, i. 381.
  - cheques, i. 382; xiv. 9.
  - effect of entries in pass-book, i. 380.
  - goods left for safe custody, i. 386; iv. 201.
  - holidays, ii. 83; vi. 221; xii. 263.
  - letter of guarantee, viii. 36.
  - liability of, ii. 30; xiv. 9.
  - name of account, i. 381.
  - notes, i. 389; ix. 12.
  - in circulation, i. 390.
  - prescription, i. 390.
  - Stamp Act, xi. 423.
  - stolen, xiii. 128.
  - over drafts, i. 383, 386.
  - pass-books, i. 45.
  - payment on forged signature, i. 384.
  - payment of altered cheques, i. 384.
  - principal and agent, x. 22.
  - retention in security, i. 387.
  - vouchers, iv. 47.
- BANK AGENT, i. 387.
- bankruptcy of, i. 389.
  - caution by, i. 388.
- BANK OF ENGLAND—
- bullion, ii. 239.
  - stock, xii. 372.
- BANK OF SCOTLAND, i. 379, 380.
- notes in circulation, i. 390.
- BANKER. *See* Bank.
- BANKER'S LIEN—
- nature of, i. 391.
  - covers only negotiable securities, i. 391.
  - debts secured by, i. 392.
  - executory funds, i. 395.
  - no right in customer to pledge securities, i. 393.
  - over bank stock, i. 395.

**BANKER'S LIEN—continued.**

power to realise securities, i. 394.  
resulting lien, i. 393.  
securities specifically appropriated, i.  
392.  
securities sent for special purpose, i.  
393.

two or more separate accounts, i. 394.

**BANKING COMPANIES (SHARES) ACT,**  
xii. 19, 20.**BANKRUPT—**

absconding of, i. 13.  
acquisitions, i. 53.  
action by, ii. 352; xii. 270.  
alien as, i. 191.  
aliment of, i. 203; ii. 54; xi. 253.  
alimentary funds belonging to, i. 204.  
appeal to House of Lords, i. 272.  
as defender, iv. 160.  
avoiding examination, i. 13; vi. 69.  
bills of exchange, ii. 76, 96.  
*bona fides*, ii. 165.  
carrying on business, i. 3.  
caution by, x. 285.  
challenging preferences, ii. 21.  
composition by, iii. 159.  
damages for reparation, x. 285.  
deceased's disposition, xiii. 215.  
discharge of, iv. 240; xi. 228-233, 237,  
238; xiii. 66; xiv. 77.  
in *cessio*, ii. 373; iv. 245.  
composition, iv. 244; xi. 237, 238.

discharging bill, ii. 165.

disponente under absolute disposition, i.  
21.

examination of, xi. 196.

income tax, vi. 300.

liability of, v. 172; xi. 252.

oath on reference, ix. 70.

personal powers of, xi. 213.

Poor's Roll, admission to, ix. 347.

radical right in estate, xi. 252.

salary of, ii. 54.

statutory disqualifications, xi. 251.

trustee accounting to discharged, i. 42.

wearing apparel of, ii. 54.

wife's property, xi. 212.

**BANKRUPTCY**, ii. 1; xiv. 9. *See* Bank-  
rupt; *Cessio*; Ranking; Sequestration;  
Trustee.

abandonment in, i. 3.

affidavits in, i. 156.

**BANKRUPTCY—continued.**

aliment of children, i. 195.  
illegitimate child, i. 195.  
alimentary debts, i. 203.  
interest, i. 205.  
annuities, i. 234.  
appeal against deliverances, iii. 260.  
assignations to land, iv. 297.  
bank account, i. 395.  
*beneficium competentiae*, ii. 54.  
bill of exchange, i. 382; ii. 9-13, 19,  
22, 95, 112.  
*bona fides*, ii. 165.  
bond of corroboration, ii. 185; x. 20.  
Catholic and secondary creditors, ii. 309.  
challenge of preferences, ii. 9; xiv. 9.  
cash payments, ii. 11; ix. 237.  
*nova debita*, ii. 13.  
transactions in course of trade, ii. 12.  
citations in, v. 138.  
collateral security, iii. 87.  
commencement and endurance of, ii. 6;  
xiv. 9.  
commission, i. 39.  
compensation, iii. 145-156.  
computation of time, xii. 262, 263.  
compositions in, iii. 159; vii. 2.  
conditional obligations, iii. 177.  
conjunct or confident person, iii. 204.  
consignments, iii. 219.  
contingent debts, iii. 258.  
co-obligants under bond, ii. 170.  
creditor suing in trustee's name, i. 4.  
Crown debts, iv. 9.  
deed of arrangement, iv. 128.  
deposits, iv. 200.  
diligence, xii. 264.  
distribution of partnership assets, xi.  
180.  
*donation mortis causâ*, iv. 338.  
double ranking, iv. 351.  
effect of, ii. 7.  
equalising dividend, v. 66.  
examination in, iii. 184.  
deceased's deposition, xiii. 215.  
of wife, xiii. 209.  
executor creditor, v. 149.  
factory and commission, v. 211.  
false claims in, v. 249.  
falsifying of books, v. 251.  
fraudulent, ii. 22; vi. 65; xii. 280.  
preferences, xii. 30.

## INDEX

BANKRUPTCY—*continued.*

goodwill, vi. 134.  
 Government salaries, etc., ii. 55.  
 gratuitous alienations, vii. 7.  
 jurisdiction in, vii. 225.  
 mode of constituting, i. 2-5; ii. 3; xiv. 9.  
     companies and corporate bodies, ii. 5.  
     debtors exempt from imprisonment, ii.  
         4.  
     debtors subject to imprisonment, ii. 5.  
*nobile officium*, ix. 20.  
 notour, ii. 2; xiv. 9.  
 oath in, ix. 58.  
 of burgh officials, ii. 264.  
 of firm, ix. 179.  
     and partners, ix. 179.  
     of partner, ix. 178.  
 of principal debtor, ii. 337.  
 penal interest, exaction of, ix. 249, 251.  
 poinding, ix. 296.  
 preferential payments, ix. 389.  
 preferences, predecessor's creditors, xii.  
     56, 57.  
 public company, iv. 105; xiv. 9.  
 retention in, x. 337.  
 retrocession to bankrupt, i. 3.  
 retiral to sanctuary, xi. 87.  
 securities, xi. 142, 149.  
 servants' wages, vi. 212; i. 291.  
*spes successionis*, xiii. 65, 66.  
*surrogatum*, xii. 202.  
 trust funds, iv. 47.  
 unclaimed dividends, i. 39.  
 unintimated transfer of shares, ii. 149.  
 valuation of contingent debt, iii. 259.  
 vested interests, xiii. 64.  
 voting annuitant, i. 234.  
     by proxy, x. 87.  
     creditor, contingent debt, iii. 260.  
     erasures in affidavit, v. 89.  
**BANNERET**, ii. 22. *See* Banrente.

**BANNOCK**, ii. 22.

**BANNS AND REGISTRAR'S CERTIFICATE**, ii. 22. *See* Marriage; Registration.  
 banns of dissenters, ii. 24.  
 effect on wife's deeds, ii. 25.  
 history and nature of, ii. 22.  
 marriage, England and Ireland, ii. 24.  
     Notice (Scotland) Act, 1878, ii. 25.  
     regulations, ii. 25.  
     schedule to be obtained, ii. 26.

**BANNS AND REGISTRAR'S CERTIFICATE—*continued.***

penalties for celebration without, ii. 24.  
 regulations and practice, ii. 23; ix. 125.  
**BANRENTE (BARONENT)**, ii. 26. *See* Banneret.

**BAPTISM OF CHILD**, x. 264.**BAR OF TRIAL—**

pleas in, ii. 31; iii. 382, 389; xii. 258.

**BAR—**

personal, i. 132; ii. 27; vi. 225; ix. 7.  
*See* Advocate.

**BARATRY. *See* Barratry.****BARGAIN**, ii. 32.

to share in results of lawsuit, ix. 105.

**BARGES—**

tug and tow, xii. 401, 403.

**BARON**, ii. 32.**BARON BAILIE**, i. 155.**BARON BAILIE COURTS**, i. 255; ii.  
     32.**BARONENT. *See* Banrente.****BARONET**, ii. 33.**BARONS OF EXCHEQUER**, ii. 33.**BARONY. *See* Right of Barony.**

burgh of. *See* Burgh of Barony.  
 mill of, ii. 34. *See* Thirlage.

**BARRATRY of Ecclesiastics**, ii. 34.

of judges, ii. 34.

of mariners, ii. 34.

**BARRIER ACT. *See* Act of Assembly.****BARTER**, ii. 35.**BASE AND PUBLIC RIGHTS**, ii. 36.**BASTARD**, ii. 39; i. 158.

administrator in law of, xiii. 2, 6.

aliment, i. 192, 195, 238; ii. 40; xii.  
     280.

aliment of parent, i. 198.

bequests to, xii. 115.

*conditio si sine liberis*, xiv. 20.

custody, ii. 40; iv. 54.

domicile, ii. 40.

executing will, xiii. 192.

legacies, vii. 380.

legitimation of, viii. 31.

mother discharging father's liability for  
     aliment, i. 195.

poor law requirements, ix. 340.

registration of birth, x. 263.

reparation, x. 286.

savings bank deposits, xi. 90.

succession, etc., ii. 41.

- BASTARDY—**  
 gift of. *See* Gift of Bastardy.  
 declarator of. *See* Last Heir.
- BATHS, WASH-HOUSES, AND DRYING-GROUNDS**, ii. 41.  
 in burghs, ii. 41.  
 in counties, ii. 42.
- BATHING-PLACE—**  
 provision and maintenance of, iv. 301.  
 seashore, xi. 100.
- BATON**, ii. 42.
- BEARER BONDS**, ii. 43.  
 nature of, ii. 43.  
 as promissory notes, ii. 43.  
 not in form of promissory notes, ii. 43.  
 negotiability, ii. 44.  
 questions as to validity, ii. 44.
- BEARER, DEEDS TO**, ii. 144.
- BEATING AND DEFAMING JUDGES**, ii. 45.
- BEER—**  
 adulteration of, xi. 63.  
 definition, ii. 218.  
 licence to sell, ii. 217.  
 manufacture of, ii. 217.  
 penalties for selling without licence, ii. 218.  
 regulations as to brewing, ii. 218.
- BEES**, ii. 45.
- BEGGARS**. *See* Vagrant.
- BEHAVIOUR AS HEIR**. *See* Passive Title.
- BELLIGERENT—**  
 cartel ship, ii. 306.  
 rights of, xiii. 274.
- BENEFICE**, ii. 48.  
 dilapidation of, ii. 49; iv. 227.
- BENEFICIARIES**, ii. 50. *See* Trust; Succession.
- advances to, ix. 22.  
 alimentary interests, i. 204.  
 alimentary interest vesting in, i. 205.  
 anticipated payment, vii. 408.  
 approval of investments, xii. 380, 381.  
 arrests, i. 315.  
 bidding at sale, i. 351; x. 117.  
 executor in England, i. 322.  
 exoneration and discharge by, v. 152.  
 lapsed trust, xii. 396.  
 personal bar, ii. 31.  
 revocation of provisions, xii. 340, 341.  
 sanctioning expenses, i. 353.
- BENEFICIARIES—*continued*.**  
 settlement policies, viii. 105–107.  
 title to sue, xii. 273.  
 trustee's debtors, xii. 363.  
 vested interests, xiii. 65.  
 interest or estate, ii. 51.
- BENEFICIUM CEDENDARUM ACTIÖNUM—**  
 Co-cautioners, ii. 54. *See* Cautionary Obligations.  
 principal debtors, ii. 52.
- BENEFICIUM COMPETENTIÆ**, ii. 54.
- BENEFICIUM DIVISIONIS**, ii. 56.
- BENEFICIUM INVENTARIÆ**, ii. 58; ix. 192.  
 procedure, ii. 58.  
 heirs and creditors, ii. 58.  
 summary, ii. 58.  
 later legislation, ii. 59.
- BENEFICIUM ORDINIS EXCURSIONIS DISCUSSIONIS**, ii. 59.
- BENEVOLENT SOCIETIES**, vi. 74.
- BEQUEST**. *See* Legacy.  
 crofters' holdings, iii. 396.  
 deposit receipts, xii. 89.  
 joint, xii. 111.  
*surrogatum*, xii. 201.
- BERTHENSECK**. *See* Burdenseck.
- BEST EVIDENCE**, ii. 59. *See* Evidence.
- BESTIALITY**, ii. 63.
- BETTING**. *See* Gaming.
- BETTING HOUSE**, vi. 111.
- BETTING AND LOANS INFANT ACT**, 1892, xiv. 55.
- BIBLE BOARD**, iii. 300.
- BIBLE—**  
 copyright, iii. 300.
- BIGAMY**, ii. 64.  
 art and part, ii. 65.  
*bona fides*, ii. 163.  
 form of the marriage, ii. 64.  
 qualities of the marriages, ii. 64.  
 indictment, ii. 65.  
 punishment, ii. 65.  
 proof of, ii. 65.  
 tribunal, ii. 65.
- BILL CHAMBER**, ii. 69; xii. 215.  
 as separate Court, ii. 69.  
 caveat in, ii. 354.  
 extracts in, v. 196.  
 office, ii. 72.  
 petitions, ix. 260.

- BILL CHAMBER**—*continued.*  
 statutory jurisdiction, ii. 70.  
 Vacation Court, ii. 70.
- BILL FOR SIGNET LETTERS**—  
 for summonses, ii. 66.  
 letters of diligence, i. 321; ii. 67.  
 advocations and suspensions, ii. 68.
- BILL OF ADVOCATION**, i. 152, 153.
- BILL OF EXCEPTIONS**, ii. 72; xi. 291; xiv. 10. *See* Jury Trial.
- House of Lords, i. 267.
- BILL OF EXCHANGE**, ii. 75. *See* Accommodation Bill; Promissory Note; Ranking; Blank Bill.
- definition and essentials, ii. 80.  
 inland and foreign, ii. 80; vi. 34.  
 effect where different parties are the same person, ii. 80.  
 drawee, ii. 81.  
 payee, ii. 81.  
 what are negotiable, ii. 81.  
 sum payable—interest, ii. 82.  
 time of payment, ii. 82.  
 payment at a future time, ii. 83.  
 omission of date, ii. 83; xii. 142.  
 ante-dating and post-dating, ii. 83.  
 computation of time, ii. 83, 84; iv. 88; xii. 262.  
 falling due on holidays, etc., ii. 83.  
 days of grace, ii. 83.  
 interpretation of “month,” ii. 84.  
 payable at one or more usances, ii. 84.  
 referee, ii. 84.  
 position of referee, ii. 84.  
 optional stipulations, ii. 84.  
 definition and requisites of acceptance, ii. 85.  
 time for acceptance, ii. 85.  
 general acceptances, ii. 86.  
 inchoate bills, ii. 86.  
 completion in reasonable time, ii. 87.  
 completed in due course, ii. 87.  
 delivery, ii. 88.  
 capacity and authority, ii. 88.  
 signature of parties essential, ii. 89.  
 by mark or initial, xii. 142.  
 trade or assumed name, ii. 89.  
 partnership, ii. 89.  
 forged or unauthorised, i. 382; ii. 30, 89.  
 ratification of unauthorised signature, i. 135; ii. 89.
- BILL OF EXCHANGE**—*continued.*  
 capacity and authority—*continued.*  
 procurations signatures, ii. 90.  
 agent or representative, ii. 90.  
 consideration, ii. 90; xiv. 10.  
 holder in due course, ii. 91.  
 presumption of value, ii. 91.  
 negotiation, ii. 91; ix. 12.  
 what constitutes, ii. 91.  
 transfer without endorseration, ii. 92.  
 requisites of endorsement, ii. 92.  
 partial endorsement, ii. 92.  
 several payees or endorsees, ii. 92.  
 misdescription of payee or endorsee, ii. 92.  
 order of endorsements, ii. 93.  
 kinds of endorsements, ii. 93.  
 conditional endorsement, ii. 93.  
 blank endorsement, ii. 93.  
 special endorsement, ii. 93.  
 conversion of blank into special, ii. 93.  
 restrictive endorsements, ii. 93.  
 rights and powers of restricted endorsee, ii. 93.  
 overdue bills, ii. 93.  
 presumption as to date of, ii. 94.  
 dishonoured bills, ii. 94.  
 party already liable, ii. 94.  
 rights and duties of holder, ii. 94.  
 general, ii. 95.  
 presentment necessary, ii. 95.  
 time for presenting, ii. 95.  
 rules for presentment, ii. 95.  
 by and to whom and when, ii. 95.  
 two or more drawees, ii. 96.  
 drawee dead or bankrupt, ii. 96.  
 presentment through post office, ii. 96.  
 presentment excused, ii. 96.  
 non-acceptance, ii. 96.  
 dishonour by non-acceptance, ii. 96.  
 qualified acceptances, ii. 97.  
 rules as to presentment for payment, ii. 97.  
 delay for non-presentment, ii. 98.  
 dishonour by non-presentment, ii. 99.  
 notice of dishonour, ii. 99.  
 rules as to notice, ii. 99.  
 by whom, ii. 99, 100.  
 effect by holder, ii. 99.  
 effect by endorser, ii. 99.  
 mode of, ii. 100.

**BILL OF EXCHANGE—continued.**

rights and duties of holder—*continued*.  
 notice of dishonour—*continued*.  
 implied, ii. 100.  
 unsigned, ii. 100.  
 insufficient, ii. 100.  
 wrong description, ii. 100.  
 to whom given, ii. 100.  
 time for giving, ii. 100.  
 notice by agent, ii. 100.  
 remote parties, ii. 101.  
 miscarriage in post, ii. 101.  
 delay excused, ii. 101.  
 dispensed with, ii. 101.  
 noting or protest, ii. 101.  
 successive protests, ii. 102.  
 time for noting and protesting, ii. 102.  
 protest regarding security, ii. 102.  
 place of protest, ii. 102.  
 requisites of protest, ii. 102.  
 protest of lost bill, ii. 103.  
 protest dispensed with, ii. 103.  
 duties to drawee or acceptor, ii. 103.  
 liabilities of parties, ii. 103.  
 funds in drawee's hands, ii. 103.  
 bill operates as intimated assignation, ii. 104.  
 of acceptor, ii. 104.  
 of drawer, ii. 104.  
 of endorser, ii. 104.  
 successive endorsers, ii. 104.  
 stranger as endorser, i. 362; ii. 105.  
 measure of damages, ii. 105.  
 dishonoured abroad, ii. 105.  
 interest as damages, ii. 106.  
 "transferror by delivery," ii. 106.  
 warrant to transferee, ii. 106.  
 discharge, i. 382; ii. 106.  
 payment in due course, ii. 106.  
 confusion, ii. 107.  
 novation, ix. 35.  
 renunciation, ii. 107.  
 conditional renunciation, ii. 107.  
 cancellation, ii. 107.  
 alteration, ii. 108.  
 acceptance and payment, ii. 108.  
 for honour, ii. 108; ii. 110.  
 partial, ii. 109.  
 requisites, ii. 109.  
 maturity, ii. 109.  
 acceptance and discharge, liability of acceptor, ii. 109.

**BILL OF EXCHANGE—continued.**

acceptance and payment—*continued*.  
 presentment for honour, ii. 109.  
 place and time for presentment, ii. 109.  
 delay in presentment, ii. 110.  
 protest for non-payment, ii. 110.  
 payment for honour, ii. 110.  
 preference to payer, ii. 110.  
 notarial attestation, ii. 110.  
 effect of payment, ii. 110.  
 payer entitled to delivery, ii. 110.  
 holder refusing payment, ii. 110.  
 lost instruments, ii. 111; xii. 142.  
 holder's right to duplicate, ii. 111.  
 action, ii. 111.  
 set of bills, ii. 111.  
 rules, ii. 111.  
 sexennial prescription, ii. 115.  
 effect of statute, ii. 116.  
 evidence, ii. 116.  
 interruption, ii. 117.  
 diligence, ii. 117.  
 action, ii. 117; xiv. 10.  
 proof of debt, ii. 118; xiv. 10.  
 constitution of debt, ii. 119.  
 resting owing to debt, ii. 119.  
 writ of debtor, ii. 119.  
 oath of debtor, ii. 119.  
 joint obligants and partners, ii. 120.  
 debtor's representative, ii. 120.  
 judicial admission, ii. 121.  
 debt established, ii. 121.  
 limitations, ii. 121.  
*terminus a quo*, ii. 121.  
 international law, ii. 121.  
 miscellaneous, good faith, ii. 112.  
 signature, ii. 112.  
 computation of time, ii. 112.  
 days of grace, iv. 89; xii. 262.  
 noting equivalent to protest, ii. 112.  
 protest where notary cannot be obtained, ii. 112.  
 saving clauses, ii. 112.  
 construction with other acts, ii. 113.  
 personal bar, ii. 28.  
 parole evidence, ii. 113.  
 pledge of, ix. 280.  
 for less than 20s., ii. 113.  
 allonge, i. 208, 209.  
 privileges of, ii. 114; x. 47.  
 ranking in bankruptcy, ii. 122.

**BILL OF EXCHANGE—continued.**

miscellaneous, good faith—*continued.*

registration of, x. 244, 249.

summary diligence on, ii. 113; xii. 141–143.

at whose instance, xii. 141.

against whom, xii. 141.

when competent, xii. 142.

when incompetent, xii. 142.

householder's certificate of protest, xii. 143.

suspension, xii. 206.

lost bill, xii. 142.

vitiated or altered bill, xii. 142.

stamp duty, ii. 114; xi. 424.

foreign bills, ii. 115.

improperly stamped, xii. 142.

payable on demand, ii. 114.

protest, ii. 115.

set, ii. 115.

**BILL OF HEALTH—**

prisoners, ii. 124.

shipping, ii. 125.

**BILL OF LADING.** *See* Charter-Party;

Consignment; Demurrage; Factor's  
Acts; Freight; General Ship; Ship-  
master.

blank, ii. 144.

contract of carriage, ii. 125.

effect in a question with onerous en-  
dorsee, ii. 126.

effects of statements as to condition  
of goods, ii. 127.

effect of incorporating the charter-  
party by reference, ii. 128.

document of title, i. 336, 338; ii. 129;  
xii. 29, 30; ix. 284.

endorsee's right, ii. 130.

security-writ, liability of endorsee for  
freight, ii. 131.

bills drawn in sets, ii. 131.

law applicable, ii. 132.

master's refusal to sign, ii. 132.

master's authority to vary contract,  
ii. 133.

**BILL OF SALE OF SHIP, ii. 134.**

forms, ii. 135. *See* Ship.

**BILL OF SUSPENSION.** *See* Suspension.**BILL (PARLIAMENTARY).** *See* Parlia-  
mentary; Statute Law; Private Bill  
Legislation; *Locus standi*.**BILLS, SINGLE.** *See* Rolls.

**BILLETING,** i. 308; ii. 130; [xiii. 230.]

**BILLIARD ROOMS,** xiv. 61.

**BIRDS—**

protection of wild, ii. 139; xiv. 10.  
close time, iii. 63.

wild duck, xiii. 190.

woodcock, xiii. 221.

swans, xii. 222.

**BIRTH.** *See* Child Murder; Concealment  
of Pregnancy.

abroad, x. 264.

at sea, x. 264.

of nearer heir, xii. 58.

registration of, x. 263.

**BIRTH-BRIEF—**

borebrieve, ii. 140.

**BISHOP'S TEINDS,** ii. 140.**BLACK ACTS,** ii. 140.**BLACK LIST.** *See* Slander.**BLACK MAILL,** ii. 141; xii. 255.**BLACK ROD—**

Gentleman Usher of the, ii. 141.

**BLANCH HOLDING.** *See* Blench.**BLANK BILL,** ii. 142; vi. 39. *See* Bill  
of Exchange.

definition, ii. 142.

provisions of Act 1882, ii. 142.

liability of signer, ii. 142, 143.

**BLANK BONDS,** ii. 143. *See* Bond.

deeds struck at by Act 1695, ii. 144.

deeds to bearer, ii. 144.

when blanks may be filled up, ii. 144.

notes of trading companies exempted,  
ii. 145.

**BLANK DAYS,** ii. 145.**BLANK DEEDS,** ii. 145. *See* Deeds.**BLANK TRANSFER,** ii. 146. *See* Transfer  
of shares transferable only by deeds,  
ii. 147.

effect when deed not required, ii. 147.

good security in England, ii. 147.

effect of Act 1696, ii. 148.

as security in Scotland, ii. 148.

legal requirements, ii. 148.

security by assignation not sufficient, ii.  
148.

security by actual registration, ii. 149.

by deposit of certificates, ii. 149.

by transfers fully made out, ii. 149.

bankruptcy of transferor, ii. 149.

in hands of third parties, ii. 150.

duty of company as to registration, ii. 151.

## BLASPHEMOUS WORKS—

sale of, i. 345.

## BLASPHEMY, ii. 151, 344.

## BLAZON, ii. 151.

## BLEACHERS—

lien, ii. 152.

## BLEACHING, ii. 151.

servitude, ii. 151; xi. 269.

## BLEACHING AND DYE WORKS—

employment in, v. 222.

## BLENCH—

tenure, i. 185; ii. 152.

casualties, xii. 160.

charter, ii. 153; v. 320.

non-entry, xii. 160.

prescription, xii. 159.

## BLIND PERSONS' DOGS, iv. 315.

## BLIND PERSONS—

as voters, ix. 134; xiii. 45.

execution of deeds by, ii. 153.

notarial execution, iv. 138.

will, xiii. 195.

## BLOCKADE, ii. 153.

breach of, ii. 154.

contracts, ii. 156.

*Gazette*, notice of, vi. 119.

international law, vii. 43.

penalty, ii. 156.

## BOARD—

District Fishery, vi. 18.

Fishery, vi. 9.

Local Government, viii. 132.

Parochial, ix. 138.

School. *See* School Board.

Lunacy, viii. 169.

## BOARD OF AGRICULTURE—

Contagious Diseases (Animals), iii. 243.

Fertilisers and Feeding Stuffs Act, v. 262.

## BOARD OF AGRICULTURE AND FISHERIES, xiv. 10, 34, 81.

## BOARD OF SUPERVISION, ii. 157.

## BOARD OF TRADE, xii. 285; xiv. 81.

British ships, xiii. 241.

deceased seamen's wages, xii. 126, 127.

fisheries, xiv. 81.

foreshore, xi. 100.

Notice of Accidents Act, 1894, i. 34.

patents, xiv. 58.

ports and harbours, ix. 354, 355.

Provisional Order, x. 85.

railways, x. 131, 132, 137, 142, 155, 156, 157, 159, 164, 165, 168, 171, 172; xii. 286.

## BOARD OF TRADE—

regulations at sea, xi. 99.

salvage, xi. 67.

seamen's saving banks, xi. 92.

shipping, xi. 332; xii. 287.

tramways, xiii. 280, 289.

wrecks, xiii. 224, 225.

## BOATS—

beaching, xi. 100.

fishing, xii. 302-305.

## BODY—

dead, iv. 90.

disinterment, ii. 266.

snatching, iv. 90; xii. 246.

## BONA FIDE—

lodgers, viii. 63.

traveller, ii. 164; viii. 62, 63.

## BONA FIDES, ii. 158.

affecting status, ii. 161.

biganuy, ii. 163.

bill of lading, ii. 130, 133.

fiduciary relations, ii. 163.

*gestio pro hærede*, ix. 189.

mercantile contracts, ii. 164

negotiable instruments, ix. 4.

opposing private bill, x. 43.

parent and child, ix. 111.

payment, ii. 161; ix. 235.

payment to bankrupt, ii. 165.

pledge, ix. 283.

poor law relief, applicants for, ix. 337.

possession, ii. 159.

possessory judgment, ix. 364.

*præpositura*, ix. 379.

principal and agent, x. 19, 25.

printer, x. 26.

proxy, x. 89.

railway passenger, x. 158.

rating, x. 184.

reparation, x. 288.

repetition, x. 304.

restitution, x. 326, 327.

retention, x. 338.

## BONA VACANTIA, ii. 166.

## BOND, ii. 166; vi. 327.

assignation. *See* Back-Bond; Bearer Bonds; Blank Bonds; Bottomry; Discharge; *Respondentia*.

arrestments, i. 313, 316.

blanks in, xiii. 198.

two or more obligants, ii. 170.

creditor's succession, ii. 168; xii. 90, 91.

**BOND—continued.**

debtor's succession, ii. 169.  
 interest, ii. 167.  
 variations, ii. 170.  
 penalty, ii. 167.  
 Stamp Acts, xi. 428, 450.  
 and assignation in security, ii. 172.  
 and disposition in security, ii. 174.  
*See Back Bond ; Disposition, Absolute.*  
 receipt and obligation, ii. 174.  
 destinations in, xii. 69.  
 for future debts, i. 19.  
 disposition in security, ii. 175.  
 description of subjects, v. 288.  
 assignation of rents, i. 339 ; ii. 175.  
 assignation of writs, i. 340 ; ii. 176.  
 redemption, ii. 177.  
 obligation for expenses, ii. 177.  
 power of sale, ii. 177 ; ix. 374.  
 power to purchase, ii. 178.  
 warrandice, ii. 177.  
 special clauses, ii. 179.  
 premiums, ii. 180.  
 ranking, ii. 179.  
 power to feu, ii. 180.  
 assignation, ii. 180.  
 creditor's succession, ii. 181.  
 debtor's succession, ii. 181.  
 completion of title, ii. 182.  
 notarial instrument, ix. 27.  
 postponed, ii. 309 ; ix. 375.  
 ranking *pari passu*, xii. 376.  
 restriction, ii. 180.  
 sale by bondholder, ii. 179.  
 poinding of ground, vii. 51 ; ix. 300.  
 effect of bankruptcy, ii. 15, 16.  
 bail, i. 376.  
 of cash credit in a bank, ii. 183.  
 liability of eo-obligants, ii. 183.  
 suspension, ii. 184.  
 gaming and betting, vi. 108.  
 judicial, xi. 416.  
 of annualrent, xi. 144.  
 of annuity, i. 231 ; ii. 182.  
 of caution. *See Cautionary Obligations.*  
 in suspensions, ii. 349.  
 of corroboration, ii. 184, 324.  
 of foreign and colonial governments, ix.  
 14.  
 of presentation, ii. 186.  
 of relief. *See Cautionary Obligations ; Relief.*

BONDED WAREHOUSE, xiii. 152, 153.  
**BONUS—**  
 broker, ii. 229.  
 capital and income, ii. 290.  
 insurance, ii. 190.  
 transferror and transferee, ii. 188.  
**BOOKS**, ii. 190. *See Copies and Extracts,*  
 as evidence, ii. 190.  
 commission to recover, iii. 110.  
 copyright in, iii. 292.  
 falsifying of, v. 251.  
 history, chronicles, etc., ii. 191.  
 joint stock companies, vii. 141.  
 liquidated company, xii. 185.  
 log, viii. 154.  
 mercantile, ii. 191.  
 official, ii. 190.  
 presumptions, x. 5.  
 of adjournal, ii. 192.  
 of Council and Session, ii. 192 ; x. 246.  
 of sederunt, ii. 193.  
**BOOKING—**  
 of a prisoner for debt, ii. 193.  
 register of, xi. 111, 119.  
 tenure of, ii. 194.  
**BORDER WARRANT**, ii. 196.  
**BORROWING.** *See Loan ; Commodate ; Mutuum : Interest ; Risk ; Trust.*  
 county council, iii. 356.  
 friendly societies, xiv. 37.  
 joint stock companies, vii. 105, 149,  
 150.  
 parish councils, ix. 115.  
 Public Health Act, x. 107, 116.  
 railways, x. 166.  
 roads and bridges, x. 373.  
 supercargo, xii. 152.  
 process, ii. 196, 294.  
 registered deeds, x. 249.  
 tutor, xiii. 15, 19, 20.  
**BOTTOMRY**, ii. 197 ; xi. 329. *See Respondentia.*  
 definition, ii. 197.  
 maritime interest, ii. 197.  
 bonds by owners, ii. 198.  
 bonds by master, ii. 198.  
 bonds over freight, ii. 201.  
 essentials to validity, ii. 199.  
 lender's duties, ii. 200.  
 personal obligations, ii. 200.  
 mode of enforcing, ii. 201.  
 law applicable, ii. 201 ; vi. 31.

- BOUGHT AND SOLD NOTE, ii. 202.  
stamp duty, ii. 203.
- BOUNDARIES—  
*ad medium filum*, i. 117.  
alteration of county, xi. 120.
- BOUNDING CHARTER, ii. 203; v. 290; ix. 186.  
effect, ii. 203.  
conflict, ii. 206.  
judicial construction, ii. 205.  
rights beyond, ii. 205.  
prescription, v. 290; ix. 186, 399.
- BOWING—  
of cows, ii. 206.
- BOXDAYS, ii. 71, 207, 279; iii. 60.
- BOXING (lodging papers), ii. 207.  
appeal to Court of Session, i. 260; ii. 207.  
petitions, ix. 261.  
reclaiming note, ii. 207; x. 211, 212.
- BREACH OF ARRESTMENT. *See* Arrestment.
- BREACH OF CONTRACT. *See* Contract.
- BREACH OF INTERDICT, ii. 208.  
procedure, ii. 208.  
punishment, ii. 209.  
recall of interdict, ii. 209.
- BREACH OF PROMISE OF MARIAGE, ii. 210. *See* Seduction.  
promise, ii. 211.  
breach, ii. 211.  
defence, ii. 212.  
inability to fulfil contract, ii. 213.  
right of action; executors, ii. 213.  
amount of damages, ii. 214; xi. 366.  
tender, xii. 239.  
minor's liability, xiv. 54.
- BREACH OF THE PEACE, ii. 209. *See* lawburrows.  
complaint, ii. 210.  
conduct which amounts to, ii. 210.  
cock-fighting, vi. 110.  
cursing and swearing, iv. 48.  
duelling, iv. 362.  
mobbing, viii. 370.  
places where committed, ii. 210.  
tribunal, ii. 210.
- BREACH OF TRUST AND EMBEZZLEMENT, ii. 214.  
duty to account, ii. 215.  
agency, ii. 215.  
indictment, ii. 215.
- BREACH OF TRUST AND EMBEZZLEMENT—*continued.*  
partnership, ix. 162.  
punishment, ii. 215.
- BREAD—  
adulteration of, xi. 63.
- BREAKING BULK, ii. 215.
- BREAKING ENCLOSURES, ii. 216.
- BREAKING OF PRISON. *See* Prison-Breaking.
- BREAKING THE SABBATH, xi. 1.
- BREWING, ii. 217. *See* Beer.
- BRIBERY, ii. 218.  
agent, x. 16.  
arbiter, i. 303.  
councillor, xiv. 22.  
judges, ii. 218.  
public officials, ii. 219.  
trustees, xii. 354.  
university graduate, xiii. 45.  
witness, xiii. 212.  
at elections, iii. 323.
- BRIDGES. *See* Roads and Bridges.
- BRIEVE, ii. 220.  
of division, ii. 224; xii. 49.  
of idiocy, furiosity, and cognition, ii. 221; xii. 26.  
of perambulation, ix. 254.  
of inquest, vii. 1.  
of review in procedure, ii. 224; xiii. 27.  
of service, ii. 220.  
of terce, ii. 223; xii. 50.  
of tutor, ii. 221; xiii. 25.  
*Gazette* notices, ii. 222.
- BRITISH LINEN COMPANY, i. 380.  
notes in circulation, i. 390.
- BROCAGE, ii. 224. *See* Broker.
- BROCARD, ii. 225.
- BROKER, ii. 226. *See* Principal and Agent; Stockbroker.  
appointment and termination, ii. 227.  
authority and powers, ii. 227.  
bought and sold note, ii. 202.  
duties and liabilities to principal, ii. 229.  
liabilities to third parties, ii. 229.  
rights against principal, ii. 231.  
rights against third parties, ii. 229.  
principal against third parties, ii. 232.
- BROTHEL, iii. 378.  
power of constables, iii. 237.  
suppression of, iii. 378; iv. 252.

## BROTHERS—

aliment of, i. 192, 198; vii. 190.  
succession, xii. 44, 45, 46, 48, 77.

## BUBBLE ACT, 1719, ii. 233.

## BUILDER—

contract by, xii. 203–205.  
schedules, xii. 204.  
surveyor, xii. 204.

BUILDING LEASES. *See* Leases.

## BUILDINGS—

dangerous, x. 61.

## BUILDING RESTRICTION, i. 210; ii. 233.

*See* Burdens; Servitudes; Support.  
constitution, ii. 233.  
examples, ii. 234.  
reference to a plan, ii. 234.  
title to object to infringement, ii. 235; xii.  
275.

interest to maintain action, ii. 236.

interpretation of, ii. 236.

nuisances, relative to, ix. 50.

BUILDING SOCIETIES, ii. 237. *See*  
Friendly Societies.

## BULK—

breaking, ii. 215.

## BULL, ii. 238.

dangerous, i. 224.

## BULLION, ii. 239.

BURDENS, ii. 239, 246. *See* Public  
Burdens.

personal, ii. 246.

real money, ii. 239.

essentials, ii. 240.

irritant clause, ii. 241.

creditor's rights, ii. 242.

form of deed, ii. 242.

stamp duties, ii. 243.

transmissions, ii. 243.

succession, ii. 244.

completion of title, ii. 245.

discharge and extinction, ii. 246.

## BURDENSSACK, ii. 247.

## BURGAGE—

tenure of, ii. 247; xii. 160.

casualties, ii. 251; xii. 160.

entail, ii. 252.

feu-duty, ii. 250, 256; xi. 143.

judge warrants, ii. 252.

long leases, ii. 251.

register, ii. 248.

sasine *proprietis manibus*, xi. 88.

searches, ii. 256; xi. 111, 119.

BURGAGE—*continued.*

subinfeudation, ii. 251.

teinds, ii. 251.

terce, ii. 251; xii. 242.

writ of *clare constat*, iii. 48.

## BURGESS, ii. 257; iii. 131.

## BURGH, ROYAL, ii. 262; xiv. 10.

acres, ii. 258.

burgess, ii. 257.

accounts, iii. 129.

assessments, x. 198, 199.

assessor, x. 177, 270; xiv. 72.

common good, iii. 127.

constable, iii. 235.

convention of, iii. 272.

councillor, iii. 344.

county assessments, x. 196.

Court, i. 255; vii. 28.

freedom of, ii. 258.

gas supply, vi. 115; x. 202.

Military Lands Act, 1903, xiv. 54.

prescriptive rights, ix. 398.

prosecutor, ix. 311.

registers, x. 256; xi. 111, 119.

roads and bridges in, x. 374.

parliamentary, ii. 258; xii. 285; xiv. 10.

police, ii. 259; xiv. 10.

BURGHS OF BARONY AND REGALITY,  
ii. 265; xii. 285.

## BURIAL, ii. 265.

## BURSARY, ii. 266; xii. 272.

BURYING-PLACE, ii. 267. *See* Burial.

closing of, ii. 272, 273.

lairholder's title to sue, xii. 278.

poor rates, x. 190.

Public Health Act, ix. 52; x. 93.

registration of death, x. 265.

transferred to parish council, ix. 117.

private, ii. 267.

public, ii. 268.

kirkyards, ii. 268, iv. 212.

grass of, ii. 271.

parts and pertinents, ix. 185, 186.

burial grounds, ii. 271.

## BUYING OF PLEAS, ii. 273.

## BYE-LAW, ii. 273.

publication of, ii. 274.

repeal, alteration, etc., ii. 274.

obligation of, ii. 274.

properties of, ii. 274.

county council, iii. 362.

incorporation, vi. 313.

**BYE-LAW—continued.**

lodging-houses, iii. 134; x. 101.  
public health, x. 114.  
railway, x. 151, 157, 158.  
road authorities, x. 372.  
tramway, xiii. 287, 288.

**CABLES.** *See Anchors.***CABS.** *See Hackney Coachmen.***CALAMITY—**

death by common, xii. 205.

**CALEDONIAN BANKING CO. LTD.**, i. 380.  
notes in circulation, i. 390.**CALENDAR**, ii. 276.**CALL.** *See Company.*

by directors, ii. 276.  
by liquidator, ii. 277.

**CALLING LIST**, ii. 278. *See Summons.***CALUMNY, OATH OF**, ii. 280.**CAMERA**, ii. 280.**CANAL**, ii. 280.

assessor of, i. 331; ii. 282; x. 177,  
178.  
levy of tolls, ii. 280.  
Railway and Canal Commission, x. 163.  
rating, x. 185, 186, 187.  
sunk vessels, ii. 283.  
towing paths, ii. 283.  
traffic, x. 150.

**CANCELLATION**, ii. 283, 308.

bills of exchange, ii. 107.  
presumptions, x. 5.

**CANDIDATE.** *See Elections; Corrupt and Illegal Practices; University Elections.*  
slander of, ii. 284.**CANON LAW**, ii. 285.**CAPACITY.** *See Contract; Marriage; Witness; Testament; Age; Minor; Alien; Insanity; Criminal Responsibility; Husband and Wife.***CAPITA, SUCCESSION PER**, ii. 288; ix. 254.**CAPITAL—**

of companies, vii. 106, 142, 143, 147,  
150.  
of partnership, ix. 165.  
payments out of, vii. 191; xii. 368, 369;  
xiii. 21.

**CAPITAL AND INCOME**, ii. 289.

apportionment of liabilities, ii. 290;  
xii. 355.

insurance premium, ii. 290.

**CAPITAL AND INCOME—continued.**

reversions, etc., ii. 289.  
commercial transactions, ii. 290.  
failure of loan, ii. 291.  
repairs, taxes, etc., ii. 290.

**CAPITAL PUNISHMENT**, i. 296; ii. 291.

sentence of death, ii. 291.  
execution of sentence, ii. 292.  
burial of body, ii. 266.  
pregnant woman, ix. 390.

**CAPTION, PROCESS.** *See Abuse of Process; Diligence.***CAPTIVE.** *See Prisoner of War.***CAPTURE.** *See Prize Law.***CARD-SHARPING**, ii. 295.**CARE.** *See Negligence.***CARGO—**

average, i. 362–367. *See Freight; Charter-Party.*  
contraband of war, iii. 264.  
*respondentia*, x. 322.  
sale by shipmaster, i. 165.  
salvage, xi. 67, 72, 84–86.  
seaworthy ship, xi. 135.

**CARRIER**, ii. 296. *See General Ship; Ship; Bill of Lading.*

hackney coachmen as, vi. 157.

carriage of goods, ii. 296;

obligations under contract, ii. 296;  
x. 348.

deterioration, xi. 42, 45.

obligations under public policy, ii. 298.  
carrier's lien, ii. 302.

carriage of passengers, ii. 304; x. 152.

carriage of animals, ii. 303.

dogs, i. 225.

railway, x. 145–163.

risk, ii. 304; x. 348.

breach of contract, iv. 73.

damages against, ii. 216.

*nautæ, caupones, stabulariæ*, viii. 401.

stoppage *in transitu*, xii. 25–29.

title to sue, xi. 44.

**CARTEL**, ii. 305.**CARTEL SHIP**, ii. 306.**CASE—**

House of Lords, ii. 306.

Court of Session, ii. 306.

Inferior Courts, ii. 306.

by any Court in H.M. Dominions ii. 307.

*See Special Case.*

stated, xiii. 224.

- CASH. *See* Money.
- CASH ACCOUNT, iv. 47.
- CASH CREDIT. *See* Disposition, Absolute; Bond for Cash Credit.
- CASUAL HOMICIDE, ii. 307. *See* Homicide.
- CASUALTIES. *See* Superiority.
- blench, xii. 159.
  - booking, ii. 194.
  - burgage, ii. 251; xii. 160.
  - non-entry, xii. 168, 169.
  - relief and composition, iv. 107; xii. 169, 178.
  - implied entry does not affect, iii. 191.
  - income tax, vi. 275.
  - commutation of, xii. 178.
  - discharge, etc., xii. 178, 182; xiv. 79.
  - redemption of, xii. 177, 178.
  - renunciation of, xii. 182.
  - seller's liability, v. 311.
  - terce, xii. 243.
- CASUS AMISSIONIS*, ii. 308; x. 81.  
*See* Proving the Tenor.
- CATECHISM—
- copyright, iii. 300.
- CATHOLIC AND SECONDARY CREDITORS. *See* Creditors.
- CATTLE—
- breaking enclosures, ii. 216.
  - dealers, vi. 295.
  - injuries by and to, i. 223.
  - insurance societies, vi. 74.
  - maiming of, viii. 188.
  - pasturage of, vi. 220.
  - pointing of stray, ix. 298.
  - sheds, iv. 64.
  - stealing, ii. 311.
  - waifs and strays, xiii. 144.
- CAUSA PROXIMA NON REMOTA SPECTATUR*, ii. 311.
- CAUTION, JUDICIAL, ii. 349.
- administrator-in-law, xiii. 2, 22, 23.
  - admonition, i. 133.
  - appeal to Circuit Court i. 251; ii. 3.
  - appeal to High Court, i. 264, 265.
  - attestor, i. 347.
  - bail, i. 374, 375; ii. 351; vi. 94.
  - bankruptcy, bankrupt, ii. 337; x. 285; xi. 193, 222, 252; xii. 270, 271.
  - by witness, xiii. 205.
  - cautio usufructuaria*, ii. 351.
  - confirmation of executors, iii. 195.
- CAUTION, JUDICIAL—*continued*.
- expenses, ii. 352; xiv. 32.
  - defender, ii. 354.
  - pursuer, ii. 352.
  - interim execution, vii. 40.
  - judicatum solvi*, ii. 351.
  - judicial factor, vii. 195.
  - judicio sisti*, ii. 351.
  - juratory, ii. 350.
  - lawburrows, ii. 352; vii. 328.
  - mala fides*, viii. 189.
  - pauper litigant, ix. 349.
  - recall of arrestments, i. 318, 319, 320.
  - summary convictions, iii. 285.
  - suspensions and interdict, ii. 349; xii. 143, 207, 210, 212, 215–218.
  - testamentary curators, iv. 29.
  - tutors, curators, etc., iv. 31, 110; vi. 154; xii. 131; xiii. 7, 11, 14, 22, 23, 25, 27.
  - violent profits, ii. 352; xiii. 124.
- CAUTIONARY OBLIGATIONS—
- definition, ii. 313. *See* Co-Cautioner.
  - nature of contract, ii. 313.
  - principal debt, ii. 313.
  - principal obligation null, ii. 314.
  - modification of this rule, ii. 314.
  - contracts distinguished from, ii. 316, 317, 318, 319.
  - classification, ii. 320.
  - creditor party to contract, ii. 320.
  - creditor not a party, ii. 321.
  - primary and secondary liability, ii. 322.
  - constitution of contract, ii. 322.
  - capacity to contract, ii. 323.
  - forms of contract, ii. 324.
  - offer and acceptance, ii. 324.
  - fairness of representation, ii. 325.
  - proof of contract, ii. 326.
  - Mercantile Amendment Act, 1856, ii. 327.
  - statutory requisites, i. 30; ii. 328.
  - form and contents, ii. 328.
  - subscription, ii. 329.
  - rules of construction, ii. 330.
  - conditions precedent to liability, ii. 330.
  - proof of conditions, ii. 331.
  - conditions implied by law, ii. 332.
  - extent of liability, ii. 332; iii. 287.
  - continuing and limited guarantees, ii. 333.
  - rights and privileges, ii. 53, 334.
  - benefit of discussion, ii. 334; iv. 246.

CAUTIONARY OBLIGATIONS—*contd.*

benefit of division, ii. 57, 335.  
 relief against principal debtor, ii. 52, 335.  
 relief with co-cautioners, ii. 54, 336.  
 bankruptcy and insolvency, ii. 337, 338.  
 extinction of liability, ii. 339.  
   direct discharge, ii. 339 ; ix. 104.  
   fulfilment of contract, ii. 339.  
   revocation by cautioner, ii. 340.  
   death, ii. 341 ; vii. 196.  
   death of principal debtor or creditor, ii. 341.  
   discharge by creditor's conduct, ii. 341.  
   discharge by alteration of contract, ii. 342.  
   discharge by creditor giving time, ii. 343.  
   discharge by creditor releasing principal debtor, ii. 344.  
   discharge by creditor releasing co-cautioner, ii. 345.  
   discharge by creditor giving up or losing securities, ii. 345.  
   discharge by change in firm, ii. 346.

effect of diligence within the seven years, ii. 347.

septennial limitations of—

  effect of statute, ii. 347.  
   cases within statute, ii. 185, 186, 347.  
   cases not within statute, ii. 348.  
   minority, ii. 349.

  international law, ii. 349.

CAVEAT, ii. 354 ; xii. 212.

*CAVEAT EMPTOR*, ii. 354 ; xi. 29, 34.

CEMETERY. *See* Burying-Place.

CERTIFICATE—

analysts, xi. 61.  
 of birth, x. 264, 267.  
 chemical works, i. 206.  
 joint stock companies, vii. 122, 144.  
 medical, xiii. 56.  
 death, i. 222 ; x. 265, 269, 270.  
 of fitness for employment, v. 228.  
 of judgment, Sheriff Court, ii. 355.  
 of marriage, ii. 26 ; x. 266, 268.  
 ship mortgage, xiii. 241.  
 of registry of ship, ii. 355 ; xiii. 241.  
 pawnbrokers, ix. 234.  
 pedlar's, ix. 239.

CERTIFIED COPIES, iii. 290.

CERTIFIED COPY INTERLOCUTOR, ii. 357.

CERTIFICATION, ii. 356.

*contra non producta*, ii. 357.  
   *pro confesso*, ii. 357 ; ix. 72.  
   Sheriff Court, ii. 357.  
   to Circuit Courts, iii. 21.  
   to High Court, i. 254.

CESS, vii. 279.

*CESSIO BONORUM*, ii. 357 ; xiv. 13.

  Debtors Act, 1880, ii. 359.  
   petition, ii. 359.  
   forms of petition, ii. 375, 376.  
   first meeting, ii. 362.  
   objections to petition, ii. 362  
   examination, ii. 363.  
   award, ii. 363.  
   appointment of trustees, ii. 363.  
   effect of decree, ii. 364.  
   vesting estate in trustee, ii. 364 ; iv. 238, 299.

duties, etc., of trustee, ii. 367.

ranking of claims, ii. 370.  
 distribution of estate, ii. 370.  
 acquirenda, ii. 55.  
 contingent debts, iii. 260.  
 equalising dividend, v. 67 ; ix. 297.  
 awarding sequestration, xi. 170, 177.  
 discharge of bankrupt, ii. 373 ; iv. 245.  
 appeal, ii. 374 ; xiv. 13.  
 accountant of Court, i. 39.

CHAIRMAN. *See* Meeting (Public).

county council, ii. 377.

joint committee, ii. 377 ; vii. 96.

district committee, ii. 377.

parish council, ix. 114.

standing joint committee, ii. 377.

public meeting, viii. 323, 324.

amendment of motion, i. 215.

CHALDER, ii. 377. *See* Augmentation ; Teinds.

CHALKING—

  arrestment of ship, i. 313.  
   of door, ii. 378.

CHALLENGE, ii. 378. *See* Duelling.

  deathbed, iv. 98.

  fraudulent preferences, vii. 12.

  gratuitous alienations, vii. 10, 18.

  major, xiii. 19.

  of jurors, ii. 379.

  enmity, v. 26.

CHAMBERLAIN OF SCOTLAND, ii. 381.

CHAMBERLAIN (THE LORD) OF THE HOUSEHOLD, ii. 381.

## INDEX

- CHAMBERLAIN (THE LORD GREAT) OF ENGLAND, ii. 382.
- CHAMPERTY, ii. 382.  
Champert, ii. 382.
- CHANCELLOR, ii. 382.
- CHANCELLOR OF JURY, ii. 384.
- CHANCELLORS—  
university, xiii. 42.
- CHANCERY—  
appeal from, i. 247.  
brieve, ii. 220; xii. 243; xiii. 26.  
service of heirs, ii. 385; xi. 263.  
Sheriff of, ii. 385; xi. 263.
- CHANNEL ISLANDS, i. 370.
- CHARACTER, ii. 388.  
reference to, vi. 150.  
of the parties in civil actions, ii. 388.  
servants, vi. 211. *See* Privilege; Slander.
- CHARACTER OF PANEL, ETC., ii. 386.  
evidence affect guilt or innocence, ii. 386.  
evidence to affect sentence, ii. 387.
- CHARGE, ii. 389.  
against partners, ix. 156.  
against pupils, xiii. 16.  
amendment of, i. 216.  
before poinding, ix. 292.  
for payment, vi. 228.  
for stipend, xii. 213.  
illegal, ii. 391.  
of crime, i. 287, 288.  
of desertion, iv. 208.  
on letters of horning, i. 310.  
suspension of, i. 15; xii. 206, 219.  
under protested bill, xii. 142.
- CHARGE AGAINST SUPERIORS. *See* Confirmation; Adjudication.
- CHARGÉ D'AFFAIRES, ii. 393.
- CHARGE TO JURY, ii. 393.
- CHARITABLE INSTITUTIONS—  
income tax, vi. 277, 278, 286, 298.  
legacies to, vii. 379.  
*nobile officium*, ix. 19.  
rating, ix. 335; x. 183.  
bequest for, viii. 6.
- CHARITABLE TRUSTS, ii. 393; xiv. 13.  
approval of scheme, xii. 272.  
*cy-près*, iv. 61.  
judicial factor, vii. 211.  
legacies, vii. 400.
- CHARTER, ii. 396. *See* Bounding Charter; Confirmation by Superior; Crown Charter; Feu Charter; Resignation; *Norodamus*.
- CHARTER OF INCORPORATION—  
apothecaries, xiii. 247.  
physicians, xiii. 246.  
surgeons, xiii. 247.  
Writers to the Signet, xiii. 226.
- CHARTERS, OPEN, ix. 95.
- CHARTER-PARTY, ii. 397. *See* Average; Mutual Contract; *Damnum Fatale*; *Nautæ, Caupones*; Perils of the Seas.
- parties, ii. 397.  
construction, ii. 397.  
demise of ship, ii. 398.  
ordinary charters, ii. 398.  
bills of lading, ii. 425, 399.  
obligations implied, ii. 399.  
freight, ii. 401.  
dead freight, ii. 402; iv. 91.  
lien, ii. 402.  
special provisions, ii. 402.  
demurrage, ii. 403; iv. 194.  
cancelling clause, ii. 403.  
cesser clause, ii. 403.  
clauses of exceptions, ii. 403.  
Stamp Acts, ii. 397; xi. 431.  
dissolution of charter, ii. 405.  
damages, ii. 406; iv. 219.  
computation of time, xii. 263.
- CHARTERED ACCOUNTANT, ii. 407.  
admission, ii. 407.  
business of, ii. 408.  
remit to, ii. 408.  
lien of, ii. 409.
- CHARTERED COMPANIES. *See* Company.
- CHARTS, COPYRIGHT, iii. 307.
- CHASTISEMENT. *See* Whipping.
- CHAUDE MELLE, ii. 409.
- CHEMIST. *See* Apothecary.
- CHEQUES, ii. 410. *See* Bank; Bills.  
definition, ii. 410.  
form, ii. 410.  
on a banker, ii. 410.  
essentials, ii. 410.  
Stamp Duty, ii. 410.  
holder in due course, ii. 410.  
date, ii. 410.  
endorsement, ii. 411.  
forged endorsement, i. 384, 385; ii. 411.

CHEQUES—*continued.*

crossed cheques, ii. 412.  
 general and special crossing, ii. 412.  
 crossing obliterated, ii. 412.  
 crossing by drawer, ii. 413.  
 crossing a material part, ii. 413.  
 duties of bankers, ii. 413.  
 liability paying crossed, ii. 413.  
 protection where crossed, ii. 413.  
 crossed “not negotiable,” ii. 413.  
 protection to collecting banker, ii. 414.  
 presentment for payment, ii. 414.  
 between drawer and payee, ii. 414.  
 between drawer and transferee, ii. 415.  
 between payee and transferee, ii. 415.  
 between banker and customer, i. 383,  
     392; ii. 415.  
 blank, ii. 29, 144.  
 stale or overdue, ii. 415.  
 alterations on, i. 384; ii. 416.  
 paid, ii. 416; x. 16.  
 torn, i. 384.  
 valuable consideration, ii. 416.  
 bankruptcy, ii. 9, 11, 12, 13.  
 by parish council, ix. 115.  
 counterman of, i. 383.  
 days of grace, iv. 90.  
 payable after death, xiii. 198.  
 protest of cheque, ii. 416.  
 summary diligence, ii. 416.

CHIEF CONSTABLE. *See* Constable.

## burgh—

appointment, iii. 2.  
 powers and duties, iii. 1.

## county—

appointment, iii. 4.  
 powers and duties, iii. 2.

## CHILD—

abandonment of, i. 1.  
 murder, iii. 4.  
 as witness, ii. 62; xiii. 206.  
 legitimated, as heir, xii. 44.  
 posthumous. *See* Posthumous Child.  
 registration of birth, x. 263.  
 stealing, ix. 273.  
 stripping, ix. 272.

CHILDREN. *See* Parent and Child; Custody of Children; Bastard; Legitimacy; Succession; Vesting; *Condicio si sine liberis*; Legitim; Pupil; Minor; Age; Tutory; Curator; Crime; Witness.  
 access to, iv. 55.CHILDREN—*continued.*

boarding out pauper, ix. 337.  
 compulsory education and protection of,  
     iv. 377.  
 criminal offences against, iii. 377.  
 cruelty to, iv. 16.  
 dangerous performances by, xiv. 24.  
 employment of, v. 221; xiv. 13.  
 in coal mines, iii. 67; xiv. 13.  
 exposing, v. 181.  
 forisfamiliation of, vi. 41; xii. 78.  
 mother's liability to aliment, i. 201.  
 oath not administered, ix. 62.  
 of convict, x. 11.  
 pauper imbeciles, ix. 343.  
 poor law relief, when entitled to, ix.  
     335.  
 removing from institution, i. 193.  
 sale of intoxicating liquors to, xiv. 40.  
**CHILTERN HUNDREDS**, iii. 5.  
**CHIMNEY SWEEPERS**, iii. 6.  
 apprentice, i. 289.  
**CHINAMAN, OATH BY**, xiii. 215.  
**CHIROGRAPHUM APUD DEBITORUM**  
     *REPERTUM PRESUMITUR SOLUTUM*, iii. 7.  
**CHIROGRAPHUM NON EXTANS PRE-SUMITUR SOLUTUM**, iii. 7.  
**CHOOSING CURATORS**, iii. 8.  
 form of action, iii. 8.  
 defenders, iii. 8.  
 procedure, iii. 8.  
 who may be chosen, iii. 9; iv. 28.  
 curator resident abroad, xiii. 5.  
**CHRISTMAS**, xii. 263.  
 bills of exchange, ii. 83.  
 recess, iii. 9.  
**CHURCH**, iii. 10; vii. 275. *See* Church Courts.  
 Episcopal, v. 58.  
 Highland, xi. 131.  
 landward burghal parish, xi. 130  
 landward parish, xi. 126.  
 bells, vii. 278.  
 building and repairing of, iv. 367.  
 dissenting, v. 58; xiii. 128.  
 disturbing public worship in, xi. 2.  
 family burial-place, ii. 269.  
 income tax, vi. 278.  
 patronage, ix. 231.  
 proclamation of banns, ii. 22.  
 property, i. 208.

- CHURCH—*continued.*  
*quoad sacra*, xi. 131.  
 annexation of lands, i. 229.  
 building or repairing, i. 229; iv. 248.  
 rating, x. 190; xiv. 72.  
 registers as evidence, ii. 191.  
 relief of poor, ix. 332.  
 seats in, xi. 126–132; vii. 276.  
 Stamp Acts, xi. 450.  
 transportation, vii. 276.  
 use of, vii. 277.  
 voluntary, xiii. 128.
- CHURCH COURTS, i. 55; iii. 11.  
 kirk session, iii. 14; vi. 314; vii. 275.  
 relief of poor, viii. 136; ix. 332.  
 presbytery, iii. 14.  
 synod, iii. 16.  
 General Assembly, iii. 16.  
 citation of witnesses, iii. 13.  
 extracts in, v. 198.
- CHURCHYARD. *See* Burying-Place.
- CIRCUIT CLERKS OF JUSTICIARY,  
 xiv. 17.
- CIRCUIT COURTS—  
 fixing and holding, iii. 18.  
*quorum*, iii. 20.  
 jurisdiction, iii. 20.  
 certification, iii. 21.  
 maiden, viii. 181.  
 appeals to, i. 248; iii. 21; vii. 268;  
 xi. 360.  
 jury trial, vii. 240.
- CIRCULAR NOTES, iii. 21.  
 negotiable instruments, ix. 14.
- CIRCUMDUCTION OF THE TERM, iii.  
 22.
- CIRCUMSTANTIAL EVIDENCE. *See*  
 Evidence.
- CIRCUMVENTION (FACILITY AND),  
 iii. 22.  
 undue influence, iii. 23.
- CITATION—  
 personal, i. 74; iii. 25. *See* Service;  
 Decree; Prescription.  
 at dwelling-place, iii. 25.  
 by registered letter, i. 27; v. 139.  
 edictal, iii. 27.  
 consistorial actions, iii. 28, 204, 220.  
 warrant for, xiii. 204.  
 execution of, xiii. 205.  
*induciae* of, vi. 321.  
 domicile of, iv. 327.
- CITATION—*continued.*  
 erroneous, i. 257.  
 dispense with, ix. 23.  
 Board of Trade investigation, i. 35.  
 friendly societies, vi. 86.  
 indictment, vi. 319.  
 parish council, ix. 327.  
 partnership, ix. 181.  
 Police Court, ix. 316.  
 Public Health Acts, x. 112.  
 railways, x. 173.  
 witnesses, i. 287; iii. 30; v. 138, 140;  
 viii. 162, 204.
- Sheriff Court, iii. 30.
- Small Debt Court, xi. 354.
- interrupting prescription, iii. 30; ix. 407.
- CITATION OF JURY—  
 criminal cases, iii. 31.  
 qualification, iii. 31.  
 areas from which drawn, iii. 31.  
 how roll and lists made up, iii. 32.  
 number to be cited, iii. 32.  
 procedure for procuring list, iii. 34.  
 directing citation, iii. 35.  
 manner, iii. 35.  
*induciae*, iii. 35.  
 penalty for non-attendance, iii. 36.  
 excuses, iii. 36.  
 civil cases, iii. 36.  
 Court of Session, iii. 36.  
 Sheriff Court, iii. 36.  
 manner, iii. 37.  
 penalty for non-attendance, iii. 37.
- CITATION ON SUMMARY COMPLAINT—  
 warrant, iii. 37.  
 citation, iii. 38.  
 proof of, iii. 38.
- CIVIL ACTION. *See* Actions.
- CIVIL DEATH, iv. 97.
- CIVIL—  
 imprisonment, vi. 256; x. 31. *See* Diligence (Against the Person).  
 law, iii. 39.  
 list, i. 39.
- CIVIL PROCESS, ABUSE OF. *See* Process.
- CIVIL RIGHTS OF ALIEN, i. 190.
- CLAIMS, iii. 46. *See* Accident; Fire; Life; Salvage.
- Commissioners of Supply, iii. 120.
- due bankrupt, i. 4.
- in multiplepoinding, iii. 46; viii. 380, 382.

**CLAIMS—continued.**

under Workmen's Compensation Act, xiii. 222, 223.

**CLANDESTINE MARRIAGE.** *See* Marriage.**CLARE CONSTAT,** iii. 46; xii. 55.

preept of, xii. 155.

writ of, ix. 25; xii. 155.

Stamp Acts, xi. 459.

**CLAUSE—**

consideration, iii. 217.

dispositive, xii. 62, 63.

irritant and resolutive, vii. 74.

of direction, vi. 335; x. 256.

of immunity, xii. 383.

narrative, v. 282.

power of sale, ix. 374-377.

of pre-emption, iii. 175.

of registration, i. 334; x. 244.

of return, x. 340; xii. 64.

testing, iv. 129-144.

**CLAY,** iii. 51. *See* Lease; Reservations;

Mines; Mode of Working; Support;

Railway Clauses Consolidation; Water-  
works Clauses.

**CLERGYMAN.** *See* Minister.**CLERICAL ERROR,** iii. 52; v. 95.

in summons, iii. 52; xiv. 4.

in extract, iii. 52.

criminal law, iii. 52.

interlocutors and judgments, iii. 52.

appeal to House of Lords, vii. 168.

in protest, xii. 141.

**CLERK.** *See* Sheriff Clerk.

arrestment of salary, i. 313, 314.

commissary, iii. 104.

county, iii. 352.

of Court, iii. 58; i. 250, 253, 260, 261;  
ii. 193; x. 230; xii. 15, 16; xiii. 59.

vacation, ii. 71.

of justiciary, iii. 53; xiv. 17.

of Police Court, ix. 312.

of Session—

principal clerks, iii. 58.

depute clerks, iii. 59.

assistant clerks, iii. 60.

of teinds, iii. 60.

of the bills, i. 347; ii. 69, 70, 349.

of the Crown, iii. 52.

of the peace, iii. 57.

to advocate, i. 149.

to the Signet, xiii. 226.

**CLERK—continued.**

to auditor, i. 354.

to Income Tax Commissioners, vi. 264.

to judge, ii. 273.

to law agent, vii. 324.

to parish council, ix. 332.

notaries public, ix. 33.

under Licensing Acts, viii. 72.

**CLOSE TIME,** iii. 62. *See* Game Laws.

game, vi. 104.

ground game on moorlands, iii. 63.

winged game, iii. 62.

hares, iii. 63; vi. 160.

lobsters, iii. 64.

oysters, iii. 64.

salmon, iii. 63; vi. 15.

wild birds, ii. 139; iii. 63.

**CLOSING OF RECORD.** *See* Record.**CLOSING OF BURYING PLACE,** ii. 272,  
273.**CLUBS—**

constitution, iii. 64.

liability to third parties, iii. 65

proprietary clubs, iii. 65.

members' clubs, iii. 65.

dissolution, iii. 65.

how to sue and be sued, iii. 65.

expulsion of members, iii. 66.

licensing laws, iii. 67.

Shop Clubs Acts, 1902, xiv. 18.

registration of, xiv. 50.

working men's, vi. 74.

bankruptcy of, ii. 6; iii. 64; xii. 334.

**CLYDESDALE BANK LIMITED,** i. 380.

notes in circulation, i. 390.

**COAL MINES REGULATION ACTS,**  
1887-1896, iii. 67; xiv. 19. *See* Employment of Children Act.

interpretation, iii. 67.

boys, girls, and women, iii. 67.

below ground, iii. 67.

above ground, iii. 68.

wages, iii. 68.

single shafts, iii. 76.

division of mine, iii. 70.

certificated managers, iii. 70; xiv. 19.

returns, plans, etc., iii. 71.

notice of accidents, iii. 71.

opening or abandoning, iii. 72

inspection, iii. 72.

arbitration, iii. 73.

rules, iii. 73, 76, 77.

- COAL MINES REGULATION ACTS—  
*continued.*  
 general rules, iii. 73.  
 explosives, iii. 73.  
 safety lamps, iii. 74.  
 special rules, iii. 75.  
 publication of, iii. 75.  
 legal proceedings, iii. 75.
- COASTGUARD, xiii. 257.
- COAT OF ARMS. *See* Armorial Bearings.
- CO-CAUTIONER. *See* Cautionary Obligations.  
*beneficium divisionis*, ii. 57.  
 releasing, ii. 345.  
 relief against, ii. 336.  
 relief from, ii. 54.
- COCK-FIGHTING, iii. 77; vi. 110.
- CO-DEFENDER, iii. 78, 204.  
 damages against, i. 138; vi. 240.
- CO-DELINQUENTS, iii. 78, 209.  
 liability of, iii. 287.  
 relief, iv. 316.
- CODEX, iii. 79.
- CODICIL, iii. 80; xiii. 201. *See* Will.
- CODIFICATION OF LAW, iii. 80.
- COFFEE, ADULTERATION OF, xi. 63.
- COGNATE, iii. 83.  
 custody of children, xiii. 10.
- COGNITION AND SALE, iii. 83. *See* Judicial Factor; Trustee.
- COGNITION AND SASINE. *See* Burgage.
- COGNITION OF INSANE, xiii. 26. *See* Briefe.
- COGNITIONIS CAUSA TANTUM*, i. 322; iii. 238.
- COHABITATION—  
 constituting marriage, viii. 265.  
 divorce for desertion, iv. 207, 309.  
 condonation, iii. 179.
- COIN, viii. 372. *See* Money.
- COINING, iii. 84.  
 crime and offence, iii. 85.  
 interpretation section, iii. 85.  
 offences under Statute, iii. 85.  
 completed counterfeiting, iii. 86.  
 uttering, iii. 86.  
 indictment, iii. 86.  
 punishment, iii. 85.
- COLLABORATEUR, v. 22, 256.
- COLLATERAL SECURITY, iii. 86.  
 bankruptcy, iii. 87.  
 bills, etc., iii. 87.
- COLLATERAL SUCCESSION, iii. 88;  
 iv. 165; xii. 46, 377.  
 heritage, iii. 88.  
 moveables, iii. 89; xii. 77.
- COLLATERALS, TITLE TO SUE, xii. 273.
- COLLATION, iii. 89.  
*collatio inter haeredes*, iii. 90; xii. 85.  
*collatio inter liberos*, iii. 92; xii. 78.  
 judicial factor, vii. 190.  
 tutors nominate, xiii. 21.
- COLLECTING SOCIETIES, vi. 87.
- COLLEGE OF JUSTICE, iii. 93.  
 members, iii. 93.  
 privileges, iii. 94.
- COLLISION—  
 at sea, iii. 94; xi. 97, 332.  
 inevitable accident, iii. 95.  
 inscrutable fault, iii. 95.  
 both ships at fault, iii. 95.  
 one ship at fault, iii. 95.  
 compulsory pilotage, iii. 96.  
 maritime lien, iii. 96; vi. 250.  
 limitation of liability, iii. 96.  
 regulations for preventing, iii. 96.  
 failure to stand by, iii. 98.  
 tug and tow, iii. 98; xii. 403.  
 with harbours, etc., iii. 99.  
 damages, iii. 99.  
 costs, iii. 99.  
 nautical assessors, iii. 99.  
 insurance, iii. 99.
- COLLUSION, iii. 100. *See* Divorcee.  
 who may take the plea, iii. 101.  
 foreign divorce, iii. 101.
- COLONIAL COPYRIGHT, iii. 311.
- COLONIAL SOLICITORS, xiv. 19.
- COLONIAL STOCK ACT, xii. 372; xiv. 19.  
 trustees' powers to invest in stocks, xiv. 20.
- COMBINATION. *See* Trade Union; Strike.
- COMITY; *COMITAS*, iii. 102.
- COMMERCIAL BANK OF SCOTLAND  
 LIMITED, i. 380.  
 notes in circulation, i. 390.
- COMMISSARY COURT, iii. 103.
- COMMISSION. *See* Interrogatories.  
 crofters', iii. 393-401.  
 in the army, iii. 105.  
 proof by, ii. 71; iii. 105.  
 interlocutor granting, iii. 288.  
 citation of witnesses, xiii. 204.  
 conduct of, iii. 105.

COMMISSION—*continued.*

proof by—*continued.*

- diligence to recover writings, iii. 107, 111; xi. 380.
- evidence of witnesses, iii. 111.
- objection to witnesses, xiii. 214.
- confidential communications, iii. 183–186.
- witness in prison, xiii. 206.
- whole evidence taken, iii. 114.
- suit depending in foreign court, iii. 114; vii. 47.

railway and canal, x. 163.

agency. *See* Mandate; Agency; Brokerage; Factor; *Del credere.*

betting contracts, i. 168.

judicial factor, vii. 184.

law agent, vii. 323; xii. 362.

on sale, x. 18.

fixed by accountant of Court, i. 41.

paid to agent, x. 16, 18.

secret, vii. 112.

stockbrokers, xii. 20–22.

trustee in bankruptcy, i. 39.

## COMMISSIONER—

arrestments in hands of, i. 315.

evidence before, ii. 61.

fees, v. 178.

of Police, iii. 115; x. 374; xi. 58, 252.

purchasing heritage, iii. 118.

to the General Assembly, iii. 116.

Gas, vi. 115.

borrowing powers, vi. 116.

powers and obligations, vi. 115.

in sequestration, iii. 117; xi. 195.

## of Inland Revenue—

inhabited house duty, vi. 342.

income tax, vi. 263–266.

appeals to, v. 106.

certificate by, xi. 123.

Court of Exchequer, v. 136.

of Justiciary. *See* Justiciary, High Court of.

of Supply, iii. 119. *See* County Council.

powers and duties, iii. 119.

qualification, iii. 119.

claims, iii. 120.

county finance, iii. 122.

land tax, vii. 279–282.

prisons, x. 28, 30.

of Teinds. *See* Teind Court.

COMMISSIONER—*continued.*

of Woods, Forests, etc., i. 359.

Railways, x. 138.

of Wreck, xiii. 226.

Railway and Canal, x. 159–164; xiv. 72.

COMMITMENT FOR TRIAL. *See* Criminal Prosecution.

warrant of, xiii. 161.

essentials to, xiii. 161.

COMMITTEE, LIABILITY OF MEMBERS, i. 163.

COMMIXTION, iii. 122, 202; xi. 377.

COMMODATE, iii. 123; viii. 127.

COMMON AGENT, iii. 124.

COMMON DEBTOR. *See* Arrestment.

## COMMON—

employment, iii. 271; v. 22.

gable, iii. 125; xiv. 20.

good, iii. 127.

interest, iii. 132. *See* Common Property.

law, iii. 134.

lodging-houses, iii. 135.

passage, iii. 133.

pasturage, iii. 136.

property, iii. 137.

management, iii. 137.

power of veto, iii. 138.

division, iii. 138.

stairs, iii. 133.

COMMONS, HOUSE OF. *See* House of Commons.

COMMONTY, iii. 142.

distinguished from servitude, xi. 28.

division of, iv. 306.

games on, vi. 113.

Lands Clauses Acts, vii. 295.

COMMUNIO BONORUM, iii. 143.

COMMUNION ELEMENTS, xii. 14.

COMMUNIS ERROR, iii. 144.

## COMMUTATION—

of casualties, ix. 36.

registration operates discharge, xii. 178.

of thirlage, xii. 257.

of services and carriages, iii. 175; v. 307; xii. 160, 161.

COMPANIES, vii. 97; xiv. 40. *See* Liquidator; Supervision Order.

accounts, vii. 140.

acting as trustee, xii. 349.

actions, vii. 151.

adoption of contract, i. 135.

COMPANIES—*continued.*

amalgamation, ii. 189.  
 annual summary, xiv. 43.  
 arbitrations, i. 304.  
 arrests, i. 315; xiv. 8.  
 articles of association, vii. 110, 111.  
 auditors, vii. 140; xiv. 43.  
 balance-sheet, vii. 140.  
 bankruptey of, ii. 3, 5.  
 bills of exchange, vii. 105, 150; xii. 141.  
 bond of corroboration, vii. 105.  
 books, business, vii. 141.  
 borrowing, vi. 187; vii. 105, 149, 150; xi. 143.  
 brokerage, vii. 105.  
 calls, ii. 276; vii. 123.  
 capital, ii. 291; vii. 106, 142, 143.  
     circulating or fixed, vii. 143.  
     duty on capital, xi. 403.  
     increase of, ii. 189.  
     reduction, vii. 147.  
     uncalled, vii. 150.  
 cautionary obligations, ii. 346.  
 certificates, vii. 122, 144; xiv. 41.  
 certification, vii. 123.  
 citation of, iii. 28.  
 co-creditors, fraud of, vii. 135.  
 commission, secret, vii. 112.  
 companies—  
     assurance, i. 234; viii. 109, 112.  
     industrial assurance, vi. 87.  
     banking, i. 233, 389, 395.  
     chartered, vii. 98.  
     chemists and druggists, ix. 303.  
     clubs, iii. 64.  
     common law, vii. 98.  
     foreign, vii. 102.  
     illegal, vii. 101.  
     dentists, xiii. 254.  
     for public rights, xii. 273.  
     insurance, vi. 290–292; vii. 102.  
     limited by guarantee, vii. 120, 151; xiv. 43.  
     limited by shares, vii. 103.  
     not for gain, vii. 119.  
     unlimited, vii. 102, 152.  
     under Clauses Acts, vii. 100.  
     private, vii. 118.  
     railways, x. 167, 168.  
     compensation, vii. 152.  
     contracts, vii. 114, 115, 150.  
     Court, interference by, vii. 141.

COMPANIES—*continued.*

damages, vii. 117.  
 debentures, iv. 102; vii. 100, 149; ix. 12; x. 286.  
 prospectus, iv. 106.  
 under Companies Acts, 1862–1890, iv. 103.  
 under Companies' Clauses Act, iv. 103.  
 without conveyance, xi. 142.  
 succession, xii. 90.  
 Stamp Act, iv. 106; xi. 442.  
 various clauses, iv. 105.  
 debenture stock, iv. 105.  
 under Companies Acts, 1862–1890, iv. 105.  
 under Companies' Clauses Acts, iv. 105.  
     payment of principal, iv. 105.  
 deceit, vii. 117.  
 defunct, xiv. 43.  
 deposit of certificate, ii. 149; vii. 144.  
 directors—  
     appointment of, vii. 130; xiv. 41.  
     board meetings, vii. 139.  
     defects in authority, vii. 131.  
     fees, vii. 135.  
     joint and several, vii. 138.  
 Liability Act, vi. 236; vii. 111, 115, 117.  
 liability of, ii. 164; vii. 136–139.  
 military officers, i. 309.  
 office, nature of, vii. 129.  
 powers, vii. 132, 133.  
 qualification of, vii. 131.  
 retirement, vii. 130.  
*ultra vires*, vii. 106.  
 dividends, vii. 142.  
     bonus, ii. 188.  
     guarantee of, vii. 143.  
     warrants, ix. 13.  
 domicile, vii. 150.  
 execution of deeds, iv. 144.  
 formation of company, vii. 102.  
 fraud, vi. 60; vii. 115, 135, 149.  
 income, vi. 292.  
 income tax, vi. 286, 288, 295; vii. 144.  
 intimation of assignation, i. 335.  
 judicial caution, ii. 353.  
 leases, vii. 334.  
 lien, vii. 128.  
 list of members, vii. 128; xiv. 43.  
 management, vii. 140.

COMPANIES—*continued.*

memorandum of association, vii. 102.  
 alterations of, vii. 108, 109.  
 form and contents, vii. 103–108.  
 minutes of meeting, vii. 146.  
 misfeasance, vii. 137.  
 misrepresentation, vii. 115.  
 name of company, vii. 103, 104, 152.  
 non-existent, suing, xii. 276.  
 notice of meetings, vii. 144.  
 objects clause, vii. 104.  
 office of company, vii. 104, 150.  
 Partnership Act, ix. 153.  
 personal bar, ii. 30.  
 poinding of effects, ix. 297.  
 poinding of the ground, ix. 302.  
 poll, vii. 147.  
 privileged writings, x. 47.  
 profits, vii. 142.  
 promoters, vii. 111–113.  
 prescription, vii. 117.  
 prospectus, iv. 106; vii. 114; xiv. 41,  
   42.  
 rescission, vii. 115.  
 register of members, ii. 190.  
   rectification of, vii. 129.  
 register of mortgages, vii. 150.  
 reparation, x. 286, 287.  
 registration of, vii. 103, 152.  
 reserved fund, ii. 189.  
 resolutions, vii. 146.  
 secretary, vii. 141.  
 shares, vi. 181.  
   agreement to take, vii. 120; ix. 237.  
   allotment, vii. 120; xiv. 41.  
   arrestment of, i. 313; vi. 102.  
   bonus, ii. 188.  
   commissions for underwriting, xiv. 42.  
   conversion, vii. 107, 108; xiv. 43.  
   definition, vii. 120.  
   forfeiture of, vii. 148.  
   founders, vii. 123.  
   issue and discount, vii. 100, 106.  
   married women holding, i. 240; viii.  
    299.  
   paid in cash, vii. 121.  
   preference, vii. 100.  
   purchase of, vii. 105, 152.  
   security over, ii. 152; vii. 144; ix.  
    280.  
   surrender, vii. 105, 148.  
   transfer, i. 338; vii. 124.

COMPANIES—*continued.*

shares—*continued.*  
   transmission, ii. 146, 151; vii. 127;  
    ix. 15; xi. 57.  
   trustees, etc., holding, ii. 29; v. 143;  
    x. 320; xii. 387–389.  
   warrants, ix. 15.  
 Stamp Acts, xi. 6, 448, 452, 464, 465.  
 statutory meeting, xiv. 42.  
 statutory penalties, ix. 249.  
 Summary Jurisdiction Acts, xiv. 6.  
 title to sue, xii. 269, 277.  
*ultra vires* of, vii. 104–106.  
 valuation roll, i. 331.  
 votes, vii. 146, 148; x. 88.  
 winding up, vii. 153; xiv. 43.  
   assets, i. 333; vii. 163.  
   assurance company, i. 234.  
   by the Court, vii. 153, 154.  
   calls, ii. 277; vii. 164.  
   challenging preferences, ii. 20.  
   companies which wound up, vii.  
    153.  
   compensation or set-off, vii. 164.  
   contributors, i. 240; ii. 277; iii. 267;  
    vii. 161, 162.  
   creditors, vii. 164.  
   date of, xii. 184.  
   debenture holders, iv. 104.  
   discharge by liquidators, iv. 238.  
   discharge of servants, xiv. 38.  
   dispositions pending, vii. 164.  
   dissolution of company, vii. 165.  
   equalising diligence, vii. 164.  
   fraudulent preferences, vii. 164.  
   interest, vii. 164.  
   jurisdiction in, vii. 226.  
   liquidator, vii. 158–161.  
   name of register, vii. 165.  
   list of contributors, iii. 268; vii. 161,  
    162.  
   power of sale, vii. 159–168.  
   preferential payments, vi. 248; ix. 390.  
   presentment of bills, ii. 97.  
   profits, ii. 189.  
   reasons for, vii. 154–157.  
   reconstruction, vii. 165, 166.  
   restraint of action and diligence, vii.  
    164.  
   sale and transfer of assets, vii. 166, 167.  
   secured creditors, vii. 165.  
   stay of proceedings, vii. 165.

- COMPANIES**—*continued.*  
winding up—*continued.*  
    supervision order, vii. 157; xii. 185.  
    surplus profits, vii. 163, 164.  
    trustees and executors, vii. 162, 163.  
    unclaimed dividends, xii. 185.  
    voluntary, vii. 157.
- COMPARATIO LITERARUM**, iii. 141.  
*See* Opinion Evidence.
- COMPEARANCE**, i. 279, 280; iii. 145.
- COMPENSATIO INJURIARUM**, iii. 145.
- COMPENSATION**, iii. 145; iv. 166. *See* Retention.  
    debts in general, iii. 146.  
    debts in bankruptcy, iii. 148.  
    cautioner for, iii. 161.  
    persons between whom competent, iii. 151.  
Agricultural Holdings Act, i. 173; vii. 342.  
    animals slaughtered by authority, iii. 245.  
    by contractors, xiii. 222, 223.  
    by employers, xiii. 222, 223.  
    by railways, x. 132–134, 172.  
    by third parties, xiii. 222, 223.  
    by underwriters, xiii. 222, 223.  
    crofters' holdings, iii. 397.  
    lands taken under statutory authority, vii. 288.  
    leases, vii. 342, 343.  
    loss through election, xii. 106.  
    nuisance, ix. 38.  
    partnership, ix. 179.  
    pawnbroking, ix. 232, 233.  
    Public Health Acts, x. 112.  
    *quanti minoris*, x. 126.  
    recompensation, x. 228.  
    sub-contract, xii. 274.  
    surface damage, xii. 193, 194.  
    workmen for injuries, xiii. 222.  
    statutory bar of plea, iii. 156.
- COMPETENCY**—  
    proof before answer, ii. 47.
- COMPETENT AND OMITTED**, iii. 156.
- COMPETITION**, iii. 156. *See* Bankruptcy  
    Sequestration; Multiplepoinding; Ranking,  
    adjudgers, i. 103.  
    arrestments, i. 318.  
    *cessio*, ii. 304, 370.  
    multiplepoinding, iii. 157; viii. 380, 381.  
    ranking and sale, iii. 156; x. 173.  
    sequestration, iii. 156; xi. 198, 220.
- COMPLAINT**. *See* Petition and Complaint.
- COMPLAINT, SUMMARY**, iii. 157.  
    general form, iii. 157.  
    constituent parts, iii. 158.  
    authentication, iii. 159.  
    amendment, i. 216; iii. 391.  
    *locus delicti*, viii. 142.  
    penalties, recovery of, ix. 249.
- COMPLETION OF TITLE**. *See* Title.
- COMPOSITION BILL**, iii. 160.
- COMPOSITION CONTRACT**, iii. 159; xi. 239.  
    extrajudicial, iii. 159.  
    in partnership, ix. 181.  
    in sequestration, iii. 161.  
        offer and acceptance, xi. 234.  
        objections to approval, xi. 237.  
        judicial approval, xi. 236.  
        annulling, xi. 240.
- COMPOSITION TO SUPERIOR**. *See* Superiority.
- COMPOUND INTEREST**, vii. 38.
- COMPROMISING**; APPRISING, i. 92, 93.
- COMPROMISE**, i. 145; iii. 162.  
    counsel's right to, iii. 162.  
    curator's right to, iii. 163; xii. 363.  
    law agent's right to, iii. 162.  
    trustee's right to, iii. 163; xii. 363.  
    tutor's right to, iii. 163; xiii. 13; xiv. 82.
- COMPULSORY SALE**. *See* Lands Clauses Act.
- COMPELCTION**, iii. 163. *See* Force and Fear; Intimidation; Consent.
- COMPUTATION OF TIME**. *See* Time; Day.
- CONCEALING CRIMES**, i. 27; iii. 163.
- CONCEALMENT**—  
    principal and agent, x. 22.
- CONCEALMENT OF FACTS**, vi. 55, 58; viii. 369.
- CONCEALMENT OF PREGNANCY**, iii. 164.
- CONCILIATION ACT**, 1896, viii. 309; xii. 289.
- CONCLUSION**—  
    of summons, xii. 144, 147. *See* Summons.  
    restriction of, i. 218, 256.
- CONCOURSE**. *See* Consent.
- CONCOURSE OF ACTIONS**, iii. 165.
- CONCURSUS DEBITI ET CREDITI**, iii. 168. *See* Compensation; Retention.

- CONDEMNATOR, DECREE OF, iv. 125.
- CONDESCENDENCE, i. 74, 82; iii. 46, 168; viii. 380; x. 313.
- CONDICTIO CAUSA DATA CAUSA NON SECUTA*, iii. 169.
- CONDICTIO INDEBITI*, iii. 179; v. 94; x. 303.
- CONDITIO SI SINE LIBERIS*, iii. 171; x. 341; xii. 107, 108; xiv. 20, 79.
- application to case of testator, iii. 171.
- application to the institute, iii. 172.
- CONDITION. *See* Conditional Obligation; Conditions in Feudal Grants; Offer and Acceptance; Promise; Sale; Legacy; Vesting.
- of sale of goods, xi. 29-35.
- sale of heritage, xi. 16, 17.
- CONDITIONS IN FEUDAL GRANTS, iii. 175. *See* Building Restrictions; Burdens; Minerals; Superiority.
- personal services, iii. 175.
- restraints on alienation, iii. 175.
- monopolies, iii. 176.
- CONDITIONS IN LEGACIES, vii. 391-394; xii. 121, 122.
- CONDITIONS IN WILLS, xii. 73, 104, 105.
- CONDITIONAL INSTITUTE. *See* Institute.
- CONDITIONAL OBLIGATIONS, iii. 176.
- suspensive and resolutive, iii. 176.
- possible and impossible, iii. 177.
- potestative and casual, iii. 178.
- CONDONATION, i. 138; iii. 179.
- what amounts to, iii. 179.
- implied *in mora*, iii. 180.
- by wife, iii. 181.
- full knowledge of offence, iii. 181.
- effect of, iii. 182.
- pleading and practice, iii. 182.
- of cruelty, vii. 217.
- CONFESSOR. *See* Admissions and Confessions.
- CONFESSOR OF FAITH—
- copyright, iii. 300.
- CONFIDENT PERSON, iii. 204.
- CONFIDENTIAL COMMUNICATIONS, iii. 111, 176; xi. 383; xiv. 20. *See* Books; Commission; Evidence; Witness, between parties on same side of cause, iii. 183.
- client and legal adviser, iii. 183.
- spiritual or medical adviser, iii. 185.
- CONFIDENTIAL COMMUNICATIONS—  
*continued.*
- husband and wife, iii. 185.
- public officials, ii. 190; iii. 185; v. 115.
- CONFIRMATION BY A SUPERIOR, iii. 186; iv. 265-277.
- charter, iii. 188.
- form, iii. 188.
- Act of 1847, iii. 188.
- effect, iii. 189.
- and resignation, iii. 189.
- writ of, iii. 190; iv. 276.
- Act of 1860, iii. 190.
- Act of 1868, iii. 190.
- Act of 1874, iii. 190.
- infestment to imply entry, iii. 190.
- implied entry not to affect rights, iii. 191.
- CONFIRMATION IN BURGAGE, ii. 253.
- CONFIRMATION OF EXECUTORS, iii. 191. *See* *Ad omissa vel male appretiata*; Inventory of Estate; Vitious Intromission.
- who may apply, iii. 191; v. 140; xii. 131.
- executor-nominate, iii. 191.
- executor-dative, iii. 192.
- judicial factor, vii. 210.
- qua relict*, xiii. 68.
- executor-creditor, v. 148.
- procedure, iii. 193; xiv. 30.
- estate under £500, iii. 198; xiv. 31.
- estate in England, iii. 196.
- effect on title to sue, iii. 198.
- ad non executa*, xiv. 31.
- where unnecessary, i. 226; xi. 90; xii. 94, 295.
- expenses, iii. 198; xii. 355.
- CONFIRMATION OF TRUSTEE IN SEQUESTRATION. *See* Act and Warrant; Trustee; Sequestration.
- CONFISCATION, iii. 198, 262, 264.
- CONFLICT OF LAW, vii. 43.
- CONFUSIO*, iii. 202, 123; xiv. 20. *See* Commixtion.
- extinction of obligation, iii. 199; xi. 377.
- bills of exchange, ii. 106.
- heritable securities, iii. 201; vi. 194.
- servitudes, iii. 201; xi. 283.
- superiority, xii. 176.
- trust, xii. 327, 348.
- CONGESTED DISTRICT (SCOTLAND) ACT, 1897, xiv. 21.

- CONJOINING OF ACTIONS, iii. 202, 257.  
Sheriff Court, iii. 203.
- CONJUGAL RIGHTS (SCOTLAND)  
AMENDMENT ACT, 1861, iii. 203 ;  
viii. 301-304.
- CONJUNCT OR CONFIDENT PERSON,  
iii. 204 ; vii. 14.
- CONJUNCT RIGHTS, iii. 205.  
husband and wife, iii. 205 ; viii. 120.  
parent and child, iii. 207 ; viii. 119.  
strangers, iii. 208 ; viii. 118.
- CONJUNCTLY AND SEVERALLY, iii.  
209. *See* Cautionary Obligations.  
co-obligants, iii. 209.  
connivance, viii. 34.
- CONQUEST, iii. 210 ; xii. 48.  
in heritable succession, iii. 211.  
in marriage contract provisions, iii. 212.  
effect of consolidation, iii. 227.
- CONSANGUINEAN, iii. 88, 213 ; iv. 165 ;  
vi. 158 ; xii. 46, 77 ; xiii. 55.
- CONSANGUINITY—  
prohibited degrees of, vi. 260 ; viii. 248.
- CONSENSUS NON CONCUBITUS  
FACIT MATRIMONIUM.* *See*  
Marriage.
- CONSENT, iii. 213. *See* Title to Sue.  
essentials, iii. 214.  
heir of entail, v. 53.  
intoxicated person, vii. 49.  
Lord Advocate, iii. 167.  
minors, iii. 214. *See* Minor.  
public prosecutor, iii. 165 ; x. 60 ; xii. 280.  
pupils and imbeciles, iii. 213 ; xiii. 1, 11 ;  
xii. 269.  
wife, iii. 214.  
to contract, iii. 266.  
to conventional obligation, iii. 274.  
to sale, xi. 14.  
to wakening process, xiii. 146.  
criminal charges, iii. 377 ; x. 175.
- CONSENTER, iii. 215.  
warrandice, xiii. 154.
- CONSEQUENTIAL DAMAGES, iv. 66.
- CONSIDERATION, iii. 217.  
cheques, ii. 416.  
contracts, iii. 266.  
bills of exchange, ii. 90.  
obligations, ix. 79.  
sale of heritage, xi. 11.  
stamp duty, xi. 6.  
illegal contract, vi. 253.
- CONSIGNATION, iii. 217.  
appeal to High Court, i. 264, 265.  
arrestment, i. 316, 320.  
bankruptcy, ii. 11.  
bond and disposition in security, ii. 177.  
judge and warrant, vii. 88.  
judicial factors, i. 41.  
multiple poinding, viii. 380.  
risk, x. 349.  
sale under bond, ix. 377.  
suspension, xii. 207, 208, 212-217.  
tenth causes, iii. 62.  
register of, i. 41.  
unclaimed, i. 41.
- CONSIGNEE. *See* Consignment.
- CONSIGNMENT, iii. 218. *See* Factor's  
Acts.  
consignee's liability for conditions in  
charter-party, ii. 128.  
consignee's liability for demurrage, iv.  
194.  
consignee's liability for freight, vi. 72.  
stoppage *in transitu*, xii. 22.
- CONSISTORIAL ACTIONS, iii. 171, 219.  
*See* Divorce ; Judicial Separation.  
diligence in, iii. 220.
- CONSISTORIAL COURT. *See* Com-  
missary Court.
- CONSOLIDATION, iii. 221 ; xii. 153,  
154, 183.  
by resignation, iii. 221.  
prescription, iii. 222.  
minute, iii. 225.  
the effects, iii. 225 ; xiv. 79.  
title, iii. 225 ; ix. 29.  
destination, iii. 226.  
double superiority titles, iii. 226.  
heritage and conquest, iii. 227.  
entailed superiority, iii. 227.  
over-superior's position, iii. 228.
- CONSPIRACY, iii. 228.  
master and servant, iii. 228 ; viii. 310.  
trade unions, xii. 296-298.
- CONSTABLE, iii. 228. *See* Backing a  
Warrant ; Chief Constable.  
commission and instructions, iii. 229,  
249 ; x. 113.  
general powers, iii. 231.  
arresting with warrant, i. 288 ; iii. 231.  
arresting without warrant, i. 232,  
285 ; x. 73.  
search warrant, iii. 232.

CONSTABLE—*continued.*

services of summonses, iii. 233.  
billetting, ii. 137.  
protection of, x. 11.  
county, iii. 233.  
powers, ii. 234.  
pensions and gratuities, iii. 235.  
special, iii. 235.

burgh, iii. 235.

additional constables, iii. 237.  
special constables, iii. 237.  
pensions and gratuities, iii. 237.

## CONSTABLE OF SCOTLAND (THE HIGH), iii. 237.

CONSTITUTION, DECREE OF, iii. 238.  
Sheriff Court, xi. 314.

## CONSTITUTIONAL LAW, iii. 239; vii. 305.

## CONSTRUCTION—

of cautionary obligations, ii. 330.  
of legacies, vii. 376.  
of Statute. *See* Statute Law.  
of waterworks, xiii. 177.  
of will. *See* Will.

## CONSTRUCTIVE DELIVERY—

of deeds, iv. 177.  
of goods, iv. 184.

## CONSTRUCTIVE POSSESSION, ix. 357.

## CONSTRUCTIVE TRUST, xii. 338.

## CONSUELDINARY LAW, iii. 240.

## CONSUL, iii. 240.

as executor for foreigner, xii. 131.

domicile of, iii. 241.

duties, iii. 241.

privileges, iii. 241.

## CONSULAR COURT, iii. 242.

## CONSULTATION OF JUDGES, iii. 242.

## CONTAGIOUS DISEASES ACTS, 1866—

1869, iii. 243.

authorities to administer Act, iii. 243.

separation of animals, iii. 243.

cattle plague, iii. 243.

infected areas, etc., iii. 244.

movement of animals, iii. 245.

slaughter, iii. 245.

compensation, iii. 245.

exceptional powers for transit, iii. 246.

disease and movement, generally, iii. 246.

foreign animals, iii. 246.

provisions as to local authorities, iii. 247.

committees, iii. 247.

wharves, iii. 247.

CONTAGIOUS DISEASES ACTS—*contd.*

provisions as to local authorities—*contd.*

purchase of land, iii. 248.

officers, iii. 248.

transfer of powers, iii. 248.

expenses of local authorities, iii. 248; x. 206.

borrowing powers, iii. 249.

police, iii. 249.

powers of inspectors, iii. 249.

general provisions, iii. 250.

offences and legal proceedings, iii. 250.

punishment in lieu of fine, iii. 250.

meaning of “cattle,” etc., iii. 251.

## CONTEMPT OF COURT, iii. 251; xii. 280; xiv. 21.

breach of arrestment, i. 317.

breach of interdict, ii. 208.

prevarication upon oath, ix. 257.

procedure, iii. 255.

review, iii. 256.

Police Court, ix. 314.

CONTEXTURE, iii. 256. *See* Accession.

## CONTINGENCY OF A PROCESS, iii. 257; x. 277.

## CONTINGENT DEBTS (IN BANKRUPTCY), iii. 258; xi. 189.

valuation of claim, iii. 259.

CONTINUATION OF THE DIET. *See* Adjournment.

civil, iii. 260.

criminal, i. 89.

CONTINUOUS ACCOUNTS. *See* Accounting.

## CONTINUOUS VOYAGES, iii. 261.

## CONTRA NON VOLENTEM AGERE NON CURRIT PRESCRIPTIO, ix. 406.

CONTRABAND. *See* Smuggling.

## CONTRABAND OF WAR—

essentials, iii. 262.

penalty, iii. 264.

cargo, iii. 264.

vessel, iii. 264.

contracts for importation, iii. 264.

CONTRACT, iii. 264. *See* Damages; Obligation; Illegal and Immoral Contracts.

definition, iii. 264.

constitution and proof, iii. 265; ix. 82.

communication of intention, iii. 265.

offer and acceptance, iii. 265; ix. 89.

**CONTRACT—continued.**

capacity, iii. 266; xi. 14.  
 consent of parties, iii. 213.  
 intoxicated person, vii. 48.  
 joint stock companies, vii. 114, 115,  
     150.  
 pupils, x. 119.  
 trustee in bankruptcy, xi. 210.  
 reality of consent, iii. 266.  
 consideration and subject-matter, iii.  
     266.  
 extinction, iii. 267.  
 breach of, iii. 267; vi. 214; ix. 84;  
     x. 25; xi. 10, 51, 52. *See* Breach  
     of Contract.  
 rules in, iv. 73.  
 by advertisements, i. 139.  
 war during, xiii. 151.  
 gaming and betting, vi. 106–113.  
 extortionate, v. 187–189.  
 fraudulent, i. 311; vi. 60.  
 homologation, vi. 224.  
 modification by invoice, vii. 66.  
 parole evidence, ix. 140.  
 penal and liquidate clause, ix. 243.  
 rescission of, v. 89; vii. 279.  
 repetition, x. 303.  
 representation in, x. 308.  
 retention, x. 330–339.  
 risks in, x. 346.  
 title to sue under, xii. 273, 274.  
 will involving, xii. 199.  
 note, ii. 202; xi. 432; xii. 21.  
 marriage. *See* Marriage-Contract.  
 of service, viii. 305–311; xii. 321–325.

**CONTRACTOR—**

breach of contract, x. 23.  
 for railways, x. 141.  
 Workmen's Compensation Act, xiii. 222,  
     223.

**CONTRIBUTION—**

general average, i. 362.  
 marine insurance, viii. 236, 239.

**CONTRIBUTORY, iii. 267. *See* Company.****CONTRIBUTORY NEGLIGENCE. *See***

Negligence.

**CONTUMACY, iii. 271.****CONVENTION OF BURGHS, iii. 272.****CONVENTION OF ESTATES, iii. 274.****CONVENTIONAL OBLIGATIONS, iii. 274.****CONVERSION. *See* Heritable and Moveable.**

**CONVEYANCING.** *See* Deeds, Execution  
 of; Assignment; Bond; Charter; Disposition;  
 Infestment; Registration; etc.

**CONVICT, iii. 274.**

licences, iii. 275; ix. 246, 247.  
 punishment of refractory, iii. 278.

**CONVICTION, iii. 278.**

default in appearance, i. 17.  
 previous, i. 171; iii. 279; xiv. 21. *See*  
 Aggravation of Crime; Character of  
 Panel.

mode of proving, i. 172.

**CONVICTION, SUMMARY, iii. 281.**

general form, iii. 281.

constituent parts, iii. 282.

judge, iii. 282.

grounds, iii. 282.

conviction, iii. 282.

place and date, iii. 283.

sentence, iii. 283.

award of expenses, iii. 285.

executorial matter, iii. 286.

authentication, iii. 286.

**CONVOY, viii. 231.****CO-OBLIGANT, iii. 286. *See* Conjunctly  
 and Severally.**

discharge of one, iv. 70.

reparation, x. 282.

sequestration, xi. 188, 189, 222.

**CO-OPERATIVE BUILDING SOCIETY—**

purchase of heritage, ii. 238.

**COPIES AND EXTRACTS, iii. 288.**

judicial records, iii. 288.

registers of private writings, iii. 289.

certified and examined, iii. 290; x. 261.

notarial, iii. 290.

Acts of Parliament, iii. 290.

as evidence, ii. 60; iii. 288.

**COPYRIGHT(LITERARY AND ARTIST),**  
*iii. 290.*

property in unpublished works, iii. 291.

drama, iii. 301.

infringement of playright, iii. 304.

remedies for infringement, iii. 304.

fine arts, iii. 306.

engravings, etchings, etc., iii. 306.

paintings, drawings, photographs, iii.

308; ix. 108.

engravings, etc. etc.—

infringement, iii. 307.

remedies for infringement, iii. 308.

## COPYRIGHT (LITERARY AND ARTIST)

*—continued.*

paintings, etc. etc.—

infringement, iii. 309.

sculpture, iii. 310.

lectures, iii. 300.

music, iii. 305 ; xiv. 21.

published works, iii. 292.

what may be the subject, iii. 293.

assignation, iii. 296.

infringement, iii. 297.

remedies for infringement, iii. 299.

Crown, iii. 300.

university, iii. 300.

Colonial, iii. 311.

interdict, vii. 25.

international, iii. 312.

succession in, xii. 42.

CORN, iii. 314. *See* Thirlage.

hypothec over, vi. 244.

poinding of, ix. 294.

CORONATION, iv. 6.

CORPORATION. *See* Incorporation; Companies; Partnership; Burgh.

duty, iii. 317.

exemptions, iii. 315.

CORPOREAL AND INCORPOREAL, iii. 317.

CORPSE. *See* Dead Body.

CORPUS DELICTI, iii. 318.

CORPUS JURIS, iii. 320.

CORREI DEBENDI, iii. 286, 209, 320.

CORROBORATION, BOND OF. *See* Bond of Corroboration.

CORRUPT AND ILLEGAL PRACTICES, iii. 321.

corrupt practices—

bribery, iii. 323.

false declaration as to expenses, iii. 331, 332.

penalties, iii. 331.

personation, iii. 330 ; ix. 137.

treating, iii. 325.

undue influence, iii. 329.

election expenses, iii. 340.

additional, iii. 341.

burgh, iii. 340.

county, iii. 340.

persons legally employed, iii. 341.

what are legal, iii. 340.

illegal employment, iii. 336.

## CORRUPT AND ILLEGAL PRACTICES

*—continued.*

illegal hiring, iii. 336.

illegal payments, iii. 335.

penalties, iii. 337.

illegal practices, iii. 332.

committee rooms, iii. 333.

conveyance, iii. 333.

exhibiting placards, iii. 333.

expenses paid through other than agent, iii. 333.

expenses in excess, iii. 334.

inducing prohibited persons to vote, iii. 334.

name and address of printer on bills, iii. 334.

payment of election bills, iii. 334.

penalties, iii. 335.

withdrawal of candidate, iii. 334.

municipal and other elections, iii. 332, 335 ; viii. 385.

parish council elections, ix. 124.

relief and exoneration, iii. 337.

slander of candidate, iii. 343.

CORRUPTION. *See* Bribery; Corrupt Practices; Attainder.

ground of appeal, i. 256.

of arbiter, i. 303.

of electors, iii. 323.

of officials, ii. 218.

of Sheriff, i. 256.

of blood, i. 345.

COUNCIL, PRIVY. *See* Privy Council.COUNCIL. *See* Parish Council; County Council.

medical, xiii. 248.

university, xiii. 43.

and Session, iii. 344.

COUNCILLOR OF A BURGH, iii. 344 ; xi. 252.

county, iii. 346, 347 ; xi. 252.

parish, ix. 122 ; xi. 252.

bribery, xiv. 22.

COUNSEL. *See* Advocate.COUNT AND RECKONING. *See* Accounting.COUNTY ASSESSOR. *See* Assessor; Rating.

COUNTY BOUNDARIES—

alteration of, xi. 120.

COUNTY CLERK, i. 331 ; iii. 352 ; standing joint committee, xii. 1.

COUNTY COUNCIL, iii. 346; xiv. 22.  
 composition of, iii. 346.  
 councillors, iii. 346.  
 qualification for councillor, iii. 347.  
 electorate, iii. 347.  
 area of government of, iii. 347.  
 boundaries and electoral division, iii. 348.  
 boundaries, iii. 348.  
 electoral divisions, iii. 348.  
 alteration, iii. 348.  
 districts, iii. 349.  
 district committees, iii. 349; xii. 1.  
 business, iii. 350.  
 business meetings, iii. 350.  
 chairman, ii. 377.  
 convener and vice-convener, iii. 350.  
 disqualification from voting, iii. 350.  
 committees, iii. 350.  
 financee, iii. 351.  
 valuation, iii. 351.  
 executive, iii. 351.  
 joint, iii. 351; vii. 95.  
 officers, iii. 352.  
 analyst, xi. 58.  
 former authorities, iii. 352.  
 appointment and dismissal, iii. 352.  
 clerk, iii. 352.  
 assessor, i. 331; iii. 352.  
 medical and sanitary inspector, iii. 352;  
 viii. 316.  
 returning, iii. 353.  
 finance, iii. 353.  
 county fund, iii. 353.  
 revenue, iii. 353.  
 expenditure, iii. 353.  
 budget, iii. 354.  
 rates, iii. 355; x. 195.  
 borrowing, iii. 356; vi. 187.  
 accounts and audit, iii. 357.  
 powers and duties, iii. 358, 361; xiv.  
 54.  
 transferred from Commissioners of  
 Supply, iii. 359.  
 transferred from road trustees, iii. 359.  
 local authorities contagious diseases  
 (animals), iii. 360.  
 baths, wash-houses, etc., ii. 42.  
 Public Health Acts, iii. 360.  
 transferred from justice of peace, iii.  
 361.  
 further powers, iii. 361.  
 jurisdiction of Sheriff, xi. 320.

COUNTY COUNCIL ELECTIONS, PROCEDURE AT, iii. 364.  
 electoral divisions, iii. 365.  
 electors, i. 331; vi. 54.  
 returning officer, iii. 365.  
 taxation, iii. 366.  
 agents, iii. 366.  
 notice of election, iii. 366.  
 nomination, iii. 366.  
 notices and advertisements, iii. 367.  
 ballot papers, iii. 367.  
 polling day, iii. 367.  
 casting vote, iii. 367.  
 result of election, iii. 368.  
 casual vacancies, iii. 368.  
 double returns, iii. 368.  
 technical defect, iii. 368.  
 delivery of documents, iii. 368.  
 corrupt and illegal practices, iii. 321, 368.  
 COUPONS, ix. 13.  
 COURT—  
 British prize, iii. 263, 264.  
 clearing of, iv. 347.  
 contempt. *See Contempt of Court.*  
 disobedience to orders, iii. 255, 271.  
 fencing the, v. 259.  
 rating, x. 183.  
 houses, x. 209.  
 Commissary, iii. 103.  
 Exchequer. *See Exchequer.*  
 Justiciary. *See Justiciary, High Court of.*  
 Lands Valuation Appeal, vii. 300; x. 180.  
 Lyon, i. 308.  
 Burgh, x. 62.  
 of Railway and Canal Commission, x. 163.  
 of Referees, x. 233.  
 Registration Appeal, x. 273, 274.  
*See Circuit Court; Church Court; Dean  
 of Guild Court; Police Court;*  
*Sheriff Court; Small Debt Court;*  
*Teind Court.*  
 COURT OF SESSION, xi. 289. *See Bill  
 Chamber; Action; Appeal; Petition;*  
*Reclaiming Note; Special Case; Case;*  
*Appearances, Entering; Macer; Minute  
 Book; Poor's Roll; Rolls; Vacation.*  
 jurisdiction, i. 321; xi. 292; xiv. 44.  
 jurisdiction excluded, xi. 294.  
 constitution, xi. 291.  
 Inner House, vi. 359; xi. 291.  
 remits from House of Lords, i. 273.  
 report to Inner House, x. 308.

COURT OF SESSION—*continued.*

*nobile officium*, ix. 19.  
Outer House, xi. 292.  
shorthand writer, ix. 60.  
COURT OF CHIVALRY, iii. 369.  
COURT-MARTIAL, iii. 369; xiv. 22.  
in army, i. 308.  
in navy, xiii. 260, 261.  
dismissal, iv. 250.  
judge, advocate-general, vii. 169.  
procedure, xiii. 261.  
prosecutor, xiii. 261.  
sentences, xiii. 262.  
naval, xiii. 260.

COURTESY, iii. 370; xi. 123; xii. 41;  
xiii. 69.

discharge of, xii. 50.  
effect of divorcee, iv. 312.  
succession, xii. 50.  
superiority, xii. 183.

## COWSHEDS, iv. 62; x. 100.

## COWS—

bowing of, ii. 206.

## CRABS, vi. 9.

## CREDIT—

inquiries as to, vi. 150.

letter of, ii. 324; viii. 40.

CREDITORS. *See* Diligence; Bankruptcy; Securities; Sequestration.

amendment of record affecting, i. 217,  
219.

ancestor's, i. 222; xi. 124; xii. 56, 57.  
assignation of profits to, xi. 149.

Catholic and secondary, ii. 309.

where only one, ii. 309.

when two or more, ii. 309.

opposing interest, ii. 310.

analogous cases, ii. 310.

cautioner's rights against, ii. 53.

confirmation of executor, iii. 197.

contingent, xi. 222.

deceased debtors, vii. 210, 211.

deed to defeat trustee's, ii. 51.

defrauding, iv. 113; vi. 65.

heir collating to prejudice of, xii. 87.

heir granting deed to prejudice of,  
xi. 124; xii. 56.

illegal poinding by, ix. 298.

qualification to sequestrate, xi. 170, 172.

in bankruptcy—

bankrupt's acquisitions, i. 3.

purchasing bankruptcy claims, i. 4.

CREDITORS—*continued.*

in bankruptcy—*continued.*

secured, xi. 221.  
suing in trustee's name, i. 4.  
insuring debtor's life, viii. 90.  
joint stock companies, vii. 164, 165.  
supervision order, xii. 183–185.  
of consignee and consignor, iii. 219.  
of deceased depositor in savings bank,  
xi. 90.  
of institute and substitute, xii. 57.  
of soldiers, i. 309.  
payments, ix. 236.  
petition to disentail, v. 43.  
power of sale, ix. 374.  
privileged, xi. 222.  
provisions by debtor to children, affecting,  
xii. 98; xiii. 114, 115, 119.

railways, x. 166, 172.

settlement policies, viii. 106.

widow's claim for aliment competing  
with, xii. 85.

heritable—

insuring security subjects against fire,  
ii. 176.

poinding, ix. 302.

search against, ii. 180. *See* Bond and  
Disposition in Security.

## CREDULITY—

oath of, ix. 291.

## CREMATION, xiii. 243; xiv. 22, 37.

CREST. *See* Armorial Bearings.CREW, iii. 372. *See* Seamen.CRIME, iii. 372. *See* Aggravation of  
Crime; Attempt; Habit and Repute;  
Pardon.

voluntary act, iii. 373.

evil state of mind present, iii. 374.

alienation of reason, iii. 375.

nonage, iii. 374; x. 122, 123.

weakness of mind, iii. 375.

while asleep, i. 327.

prescription of, xiii. 120; ix. 402.

Prevention of Crimes Act, x. 9.

abandonment of child, i. 1.

abduction, i. 9; iii. 378.

abortion, i. 11.

accessary, i. 27.

acid throwing, i. 50.

adultery as, i. 130.

arson, i. 324.

bestiality, ii. 63.

CRIME—*continued.*

bigamy, ii. 64.  
breach of arrestment, i. 317.  
breach of the peace, ii. 209.  
breach of trust and embezzlement, ii. 214.  
by ambassador, i. 212.  
card-sharping, ii. 295.  
casual homicide, ii. 307.  
cattle stealing, ii. 311.  
child murder, iii. 4.  
coining, iii. 84.  
concealing, iii. 163.  
conspiracy, iii. 228.  
criminal assault, i. 327–329.  
deforcement, iv. 161.  
demanbration, iv. 191.  
dishonest appropriation, i. 292.  
duelling, ii. 378.  
embezzlement, v. 21.  
false accusations, i. 50.  
false claims in bankruptcy, v. 249.  
falsehood, iii. 375.  
falsifying of books, v. 251.  
fire raising, v. 348.  
forgery, i. 10; vi. 38.  
fraudulent bankruptcy, vi. 66.  
hamesucken, vi. 159.  
homicide, vi. 224.  
housebreaking, vi. 233.  
incest, vi. 260.  
indecent assault, xiii. 63.  
intoxication, iii. 375; vii. 50; xiii.  
    245, 246.  
maiming, viii. 188.  
malicious mischief, viii. 193.  
murder, viii. 391.  
on board ship, xiii. 241.  
perjury, ix. 255.  
personation, xi. 96.  
piracy, ix. 272.  
plegium, ix. 272.  
ploughs, etc., destroying of, ix. 285.  
poaching, ix. 286.  
poisoning, ix. 304.  
post office offences, ix. 369–372.  
prevarication, ix. 257.  
prison-breaking, x. 31.  
rape, x. 175; xiii. 63.  
reset, x. 316.  
robbery, x. 375.  
sodomy, xi. 365.  
theft, xii. 245.

CRIME—*continued.*

threats, xii. 258.  
violating sepulchres, xiii. 123.  
vitiating deeds, xiii. 125.  
*CRIMEN FALSI*, iii. 375.  
*CRIMEN REPETUNDARUM*, iii. 376.  
CRIMINAL. *See* Apprehension; Warrant  
    to Arrest; Convict.  
absconding of, i. 12, 288.  
certificate of character, xiii. 214.  
conversation, iii. 376.  
foreign, i. 288; xiii. 160.  
lunatics, viii. 174.  
police supervision, x. 10.  
statements made by, ii. 62.  
Evidence Act, 1898, xiii. 210.  
forfeiture, vi. 36.  
investigation, x. 59.  
jurisdiction, vii. 229–231, 267.  
CRIMINAL LAW AMENDMENT ACT,  
    1885, iii. 376; xi. 365; xiv. 23.  
procuration, drugging, etc., iii. 376.  
offences against children, iii. 377; xiv.  
    23.  
age of consent, iii. 377.  
imbeciles, iii. 377.  
premises, iii. 377.  
abduction, iii. 378.  
unlawful detention, iii. 378.  
search, iii. 378.  
indecency between males, iii. 378.  
custody, iii. 378.  
suppression of brothels, iii. 378.  
letters, iii. 378.  
liability—  
    trade unions, xii. 297.  
operation, iii. 377.  
CRIMINAL PROSECUTION—  
solemn, iii. 380. *See* Productions; *Res  
    judicata*; Deposition; Poor's Agent.  
Criminal Procedure Act, 1887.  
declaration and commitment, iii. 380.  
bail, iii. 380.  
report to Crown Office, iii. 381.  
acceleration of trial, iii. 381.  
trial by Sheriff and jury, iii. 381.  
indictment, iii. 380.  
first diet, iii. 382.  
plea in bar, iii. 382.  
relevancy, iii. 382.  
plea, iii. 382; ix. 276.  
character of panel, ii. 386.

CRIMINAL PROSECUTION—*continued.*

solemn—*continued.*

- Justiciary Court cases, iii. 382.
- procedure and trial, iii. 383.
- verdict, iii. 384.
- sentence, iii. 384.
- summary, iii. 385.
- jurisdiction, iii. 386.
- institution of proceedings, iii. 388.
- hearing and judgment, iii. 389.
- incidental proceedings, iii. 390.
- appeal, iii. 392.
- execution of sentence, iii. 393.

## CRIMINAL RESPONSIBILITY, i. 163 ; iii. 374, 375.

insane persons, vii. 4.

dentists, xiii. 254.

medical practitioners, xiii. 254.

## CRIMINALS—

register of, x. 10.

## CROFT; CROFTERS' HOLDINGS (SCOTLAND) ACTS, 1886, 1887, and 1888, iii. 390 ; vii. 349 ; xiv. 23.

application of Act, iii. 393.

security of tenure, iii. 394.

fair rent, iii. 395.

arrears of rent, iii. 396.

succession and bequest, iii. 396 ; xii. 74.

nature of tenure, iii. 396.

compensation for improvements, iii. 397.

enlargement of holdings, iii. 397.

Commission, iii. 399, 401 ; xiv. 23.

powers and duties, iii. 399.

procedure, iii. 400.

diligence on decree, iii. 401.

holdings excepted from provisions of Acts, iii. 401.

CROP, iv. 1 ; vii. 340, 341. *See* Grass.

way-going, iv. 1.

access to lands, iv. 1.

taking over at valuation, iv. 2.

damaged by hunting, vi. 106.

hypothec, vi. 244.

minister's, xii. 237.

poinding of, ix. 294.

## CROPPING, iv. 2.

CROSS EXAMINATION, iv. 3. *See*

Evidence ; Witness ; Commission on Proof ; Leading Question.

CROSSED CHEQUES. *See* Cheques.

## CROWN, THE, iv. 5 ; xi. 371.

title to, iv. 5.

accession, iv. 6.

coronation, iv. 6.

prerogatives, xi. 372.

revenues, v. 187 ; xi. 373.

demise, xiv. 26.

annexed patrimony, i. 228.

annexation of church lands, i. 229

attainder, i. 345.

caducary rights of, xii. 76.

citation of, iii. 29.

clerk of the, iii. 52.

consent required, xii. 280.

copyright, iii. 300.

ferry, v. 261.

foreshore, xi. 100.

income tax, exempt from, vi. 266.

jurisdiction of Sheriff, xi. 319.

lost property, viii. 164.

minerals under sea, viii. 341 ; xi. 99  
100.

navigable rivers, x. 351.

not rateable, x. 183.

pleas, iv. 11.

royal fish, i. 225.

Stamp Act, xi. 406.

superiorities, xii. 153, 154.

whales, xiii. 188.

wrecks, xiii. 225.

writ of *clare constat*, iii. 48-50.

*ultimus hæres*, ii. 166 ; vii. 60 ; xii. 45-48.

## CROWN AGENT, i. 150 ; iv. 6 ; x. 29, 30.

## CROWN CHARTERS, iv. 7 ; x. 1.

## CROWN DEBTS, iv. 8 ; v. 184-187 ; xi. 86, 87.

CROWN LANDS, i. 208 ; iv. 10 ; xii. 153.  
title to, xii. 52.CRUELTY (CONJUGAL). *See* Judicial Separation.

## CRUELTY TO ANIMALS, iv. 11 ; vi. 110-113.

Act, 1850, iv. 12.

definition of animals, iv. 13.

what amounts to, iv. 13.

amount of personal knowledge to be proved, iv. 14.

dogs not to be used for draught, iv. 14.

vivisection, iv. 14.

Act, 1895, iv. 16.

- CRUELTY TO CHILDREN**, iv. 16 ; ix. 117.  
 offences, iv. 17.  
 arrest of offender, iv. 18.  
 procedure, etc., iv. 18.
- CRUIVES AND ZAIRES**, iv. 19 ; vi. 13.  
*See* Fishing.
- CULPA**, iv. 21. *See* Liability.
- CULPABLE HOMICIDE**, iv. 23.  
 indictment, iv. 26.  
 punishment, iv. 26.  
 druggist, unqualified, ix. 264.
- CUM DECIMIS INCLUSIS**, iv. 26.
- CUMULATIVE JURISDICTION**. *See* Jurisdiction.
- CUMULATIVE LEGACY**. *See* Legacy.
- CUMULATIVE LOSSES**. *See* Marine Insurance.
- CURATOR**, iv. 27. *See* Tutor; Judicial Factor; Choosing of Curators.  
 bankruptcy of, xiii. 27.  
 father, iv. 27.  
 restriction of rights, iv. 28.  
 powers and duties, iv. 28.  
 testamentary, iv. 29 ; xii. 352.  
 caution, iv. 29.  
 form of appointment, iv. 29.  
 nomination by third parties, iv. 30.  
 chosen by minor, iv. 30.  
 acceptance, iv. 30.  
 caution, iv. 31.  
 inventories, iv. 31.  
 failure to make inventory, iv. 32.  
 appointed by Court, iv. 32.  
 powers and duties, iii. 163 ; iv. 32 ; xi. 8.  
 person and education, v. 33.  
 estate, iv. 33.  
 entails, iv. 33 ; v. 53.  
 general duties, iv. 34.  
 management, iv. 34.  
 investments, iv. 34.  
 accounts, iv. 35.  
 special powers, iv. 36.  
*auctor in rem suam*, iv. 36.  
 diligence prestable, iv. 37.  
 extent of liability, iii. 287 ; iv. 37 ; xii. 392.  
 limitation of liability, iv. 38.  
 termination of office, iv. 39.  
 accounting, iv. 40, 41 ; v. 150.  
 powers of minors with consent, iv. 41.
- CURATOR**—*continued*.  
 actions by and against minor, iv. 42.  
 pro-curator, iv. 43.  
 powers, iv. 43.  
 liabilities, iv. 43.
- CURATOR AD LITEM**, iv. 44 ; xiv. 83.  
 to pupil, iv. 44 ; x. 120.  
 to minor, iv. 44.  
 to wife, iv. 45 ; xii. 281.  
 to insane persons, iv. 45.  
 entail, iv. 45 ; v. 52, 53, 55.  
 who are eligible, iv. 46 ; xiii. 2.  
 appointment, iv. 28, 44 ; vii. 175.  
 powers and duties, iv. 46.  
 liability for expenses, i. 353 ; xii. 393.  
 discharge by, vii. 175.
- CURATOR BONIS**—  
 to incapax, vii. 199–204.  
 custody, xiii. 24.  
 to minor, vii. 197–199.  
 petitioners for appointment, vii. 201.  
 appointment, ii. 71 ; vii. 197, 200, 202.  
 powers, iv. 238, 337 ; vii. 200 ; xii. 106.  
 acting without authority, vii. 192 ; xii. 354.  
 discharging heritable securities, xii. 363.  
 election, xiv. 29.  
 special powers, vii. 202.  
 aliment of dependents, vii. 203.  
 carrying on action, vii. 204.  
 carrying out ward's intention, vii. 203.  
 title to sue, xii. 280.  
 termination of office, vii. 204.  
 discharge of, v. 155 ; vii. 204.
- CURRENT DEPOSIT ACCOUNT OR CASH ACCOUNT**.  
 trust money, iv. 47.  
 voucher for debits, iv. 47.  
 mandate to operate, iv. 47.  
*See* Bank; Bond for Cash Credit.
- CURRENTE TERMINO**, iv. 48.
- CURSING AND SWEARING**, ii. 209 ; iv. 48.
- CURSING (OF GOD)**, ii. 151.
- CURSING PARENTS**, iv. 48.
- CURSING, LETTERS OF**, iv. 49.
- CURTILAGE**, iv. 49.
- CUSTODY, HIRING OF**, vi. 217.
- CUSTODY OF CHILDREN**, iv. 50 ; xiv. 24. *See* Tutor; Curator.

**CUSTODY OF CHILDREN—*continued.***

legitimate, iv. 50.  
 father, iv. 50.  
 questions with mother, iv. 51.  
 mother, iv. 52.  
*factor loco tutoris*, iv. 53.  
 actions, separation or divorcee, iv. 53.  
 illegitimate, ii. 40; iv. 54; xiv. 24.  
 access to, iv. 55.  
 religion, iv. 56.  
 wish of child when *minor pubes*, iv. 56.

**Courts and procedure**, iv. 56.  
 Court of Session, iv. 56.

Sheriff Court, iv. 56; xi. 310; xiv. 24.  
 duty as to vaccination, xiii. 56, 57.

**CUSTODY—**

of vagrant children, xiii. 58.  
 of dead body, i. 222.  
 of dog, i. 225.  
 of election papers, viii. 389; ix. 137.  
 of insane person, i. 170, 172; xiii. 24.  
 safe. *See* Deposition; Bank; Consuetudinary Law; Usage; Custom of Trade; Statute; Desuetude.

**CUSTOM OF TRADE**, iv. 57; x. 3; xiii. 46.

lien, viii. 80.  
 sale, xi. 28, 55.

negotiable instruments, ix. 6, 140.

parole evidence, ix. 140.

Stock Exchange, xii. 18-22.

**CUSTOMS**, iv. 60.

smuggling, xi. 363.  
 explosive substance, v. 181.  
 warehousing, xiii. 152.  
 wrecked foreign goods, xiii. 226.

**CY-PRÈS**, iv. 61; vi. 75. *See* Charitable Trusts; Educational Endowments. *nobile officium*, ix. 20.**DAILY COUNCIL**, iv. 62.**DAIRIES, COW-SHEDS, AND MILK-SHOPS**, iv. 62.

registration, iv. 63.  
 construction and water supply, iv. 63.  
 sanitary state, iv. 63.  
 contamination of milk, iv. 63.  
 regulations of local authority, iv. 63; x. 100.

existence of disease among cattle, iv. 63.  
 offences and penalties, iv. 63.  
 cattle sheds in burghs, iv. 64.

DAM DYKES, vi. 14.

DAMAGES, MEASURE OF, iv. 64; vi. 359.

general rules, iv. 65.  
*damnum absque injuria*, iv. 65.  
*injuria absque damno*, iv. 65.  
 remoteness, ii. 311; iv. 66.  
 interest, iv. 68.  
 extinction of claim, iv. 69.  
 action, iv. 69.  
 voluntary settlement, iv. 70.  
 discharge of one co-obligant, iii. 287; iv. 70.

prescription and *mora*, iv. 71.

breach of contract, iv. 73.  
 general damages, iv. 73.  
 sale, i. 326; iv. 73; xi. 33, 51, 52.  
 carriage, ii. 406; iv. 73; x. 147; xi. 136.

date of failure to deliver, iv. 74.

no available market, iv. 74.

subject purchased for use, iv. 75.

*actio quanti minoris*, iv. 75.

service, i. 290; iv. 76; x. 18, 21.

expenditure incurred, iv. 76.

special damages, iv. 77.

when not recoverable, iv. 77.

when recoverable, iv. 77.

relief, iv. 78.

specific implement or damages, iv. 78.

reduction of damages, iv. 78.

penal and liquidate, iv. 78; ix. 243.

damages as a counter-claim, iv. 79.

rules in delict, iv. 80.

action founded on negligence, iv. 81.

injury to person, iv. 81; x. 155.

resulting injury to business, iv. 81.

loss of relative, iv. 81.

aggravation of damages, iv. 81.

violent profits, iv. 82.

abstraction of minerals, iv. 82; xii. 187  
*et seq.*

mitigation of damages, iv. 82.

statutory limitations, iv. 83.

infringement of patent, iv. 83; ix. 223.

trade mark, iv. 83.

action founded on malice, i. 320; iii. 40; iv. 83; ix. 298.

aggravation, iv. 83.

mitigation, iv. 84.

*compensatio injuriarum*, iv. 84.

relief, iv. 84.

**DAMNUM**, iv. 85.  
**DAMNUM FATALE**, iv. 85.  
  accident insurance, i. 30.  
  carrier, ii. 301.  
  charter-party, ii. 403.  
  innkeeper, iv. 361.  
  lease, vii. 339.  
**DANGER SEEN**, x. 296.  
**DANGER TO LIFE**, i. 329.  
**DANGEROUS ANIMALS**—  
  liability for damage caused by, i. 223.  
**DANGEROUS ARTICLES**—  
  in public places, x. 289.  
**DANGEROUS BUILDINGS**, x. 61.  
**DANGEROUS PERFORMANCES**—  
  by children, xiv. 24.  
**DANGEROUS PROCEEDINGS**, ix. 42.  
**DATE**—  
  commencement of war, xiii. 148.  
  of Act of Parliament, xii. 4, 8.  
  of death, xii. 38–40.  
  of deed, iv. 86.  
  general, iv. 86.  
  holograph writings, iv. 87; vi. 224.  
  notarial instruments, etc., iv. 87.  
  bills of exchange, ii. 83; iv. 88.  
  of summons, xii. 147.  
  of vesting, xiii. 67, 73, 76–81.  
  the earlier in date is preferable, x. 27.  
**DAY**, iv. 88, 224; xii. 261.  
  last, executed, xii. 265.  
  last, included, xii. 264.  
**DAYS**—  
  blank, ii. 145.  
  clear, xii. 263.  
  non-business, xii. 263.  
  of grace, iv. 89.  
    bill payable on demand, ii. 83; iv. 89.  
    abolished in most countries, iv. 90.  
    number of, iv. 90.  
    instalment bill, iv. 90.  
    cheque, iv. 90.  
    fire insurance, v. 338.  
    life insurance, viii. 98.  
**DEAD BODY**, iv. 90.  
  anatomy, i. 222.  
  burial of unclaimed, ii. 266.  
  violating sepulchres, xiii. 123.  
**DEAD FREIGHT**, iv. 91. *See Charter-Party.*  
**DEAD'S PART**, iv. 91; xii. 78, 82–84,  
  86.

**DEAF AND DUMB**—  
  witnesses, xiii. 207.  
  declaration by prisoner, iv. 119.  
**DEAN OF FACULTY OF ADVOCATES**,  
  iv. 92.  
**DEAN OF GUILD**, iv. 92.  
  bankruptcy of, xi. 252.  
**Court**—  
  constitution, iv. 92.  
  jurisdiction, iv. 93.  
  procedure, iv. 95.  
  prosecutor in, x. 63.  
  assessors, i. 333.  
  judge and warrant, vii. 88; xi. 124.  
  respondents, xii. 281.  
  questions as to servitudes, xi. 288.  
  appeal, iv. 96.  
**DEANS OF THE CHAPEL ROYAL**, iv.  
  96.  
**DEATH**, iv. 97.  
  abroad, x. 265.  
  affecting rights between master and  
    apprentice, i. 290.  
  at sea, x. 265.  
  dissolves partnership, ix. 169.  
  duties. *See Account Duty; Estate Duty;*  
    Inventory Duty; Legaey and Suc-  
    cession Duty.  
  in common calamity, xii. 205.  
  in mines, etc., x. 61.  
  in prison, x. 61.  
  insurance, viii. 88.  
  of arrester, i. 316.  
  of bank customer, i. 395.  
  of cautioner, ii. 341.  
  of confirmed executor, iii. 196.  
  of master, vi. 216.  
  of oversman, ix. 102.  
  of pursuer, x. 78.  
  of servant, vi. 216.  
  of testator, xiii. 272 *et seq.*  
  of witness, xiii. 215.  
  penalty of, ii. 291.  
  pending appeal in House of Lords, i. 272.  
  presumption of, iv. 98; viii. 86.  
  registration of, i. 222; x. 264.  
  sudden, x. 60.  
  termination of contracts by, x. 25.  
**DEATHBED**, iv. 98; viii. 74; xi. 124;  
  xii. 53; xiii. 191.  
**expenses**, iv. 101; xii. 355.  
  tutors, appointed on, xiii. 7.

## DEBATES—

debate roll, iv. 101.  
failure to attend debates, iv. 250.

Inner House, i. 80.

Outer House, i. 78.

Sheriff Court, iv. 102.

## DEBATING SOCIETIES, iv. 102.

DEBENTURES AND DEBENTURE STOCK. *See* Company.

## DEBITA FUNDI, iv. 106.

feu-duty, iv. 106.

casualties of superiority, iv. 107.

    relief duty, iv. 107.

    non-entry duties, iv. 107.

    taxed composition, iv. 107.

debts heritably secured, iv. 108.

    real money burdens, iv. 108.

    bond and disposition, iv. 108.

    ground annuals, iv. 108.

succession duty, iv. 109.

burdens not, iv. 109. *See* Public Burdens.

DEBTOR. *See* Debts.

cautioner's right to relief against, ii. 52.

common, i. 310; vi. 101.

delegation, iv. 171.

diligence after death of, iv. 234.

legacy by, vii. 396.

*meditatio fugæ*, viii. 319.

oath in bankruptcy, ix. 58.

paying to insolvent administrator-in-law, xiii. 2.

payment to trustee, xii. 363.

principal, ii. 313.

    bankruptcy of, ii. 337.

    death of, ii. 341.

    insolvency of, ii. 338; vii. 5-20.

    relief against, ii. 335.

sequestration of deceased, vi. 109; xi. 169, 200, 206.

substitution of, v. 181.

succession of, ii. 169.

title to defend, xii. 281.

DEBTORS' (SCOTLAND) ACT, 1880, iv. 112. *See* Crown Debts.

*cessio* under, ii. 359.

## DEBTS.

alimentary, xi. 87.

ancestors, i. 206, 222; xii. 74.

antenuptial, i. 238.

assignation of, i. 333; xiii. 14

arrestment of, i. 310-321.

compensation, iii. 145-156.

DEBTS—*continued*.

contingent, iii. 258.

Crown, iv. 8; v. 184, 187; xi. 86, 87.

*debita fundi*, iv. 106.

due trustee, xii. 361, 363, 364.

entailers, v. 41.

extinguished confusion, iii. 199.

gratuitous discharge by minor, viii. 360.

heir's liability for, xii. 51.

imprisonment for, vi. 228, 256; xi. 86, 87; xii. 218.

intimation of, assignation of, i. 335; xii. 186.

of deceased persons, iv. 109; v. 144, 145; xii. 119, 127-129, 132, 133, 356, 361, 363, 364.

partnership, ix. 160; xi. 149.

payment, ix. 236.

payment to and by tutor, xiii. 11, 12, 14.

pledgeable, ix. 280.

privileged, v. 144; x. 46; xi. 222; xii. 84, 132, 133, 355.

regimental, x. 237.

secured, xi. 188.

sold by tutor, xiii. 12.

widow's mournings, xii. 84.

## DEBTS' RECOVERY COURT (SHERIFF COURT), iv. 113.

what debts may be sued, iv. 113.

agents, iv. 114.

summons, iv. 114; xii. 151.

decrees in absence, iv. 114.

diet of hearing, iv. 114.

proof, iv. 114.

judgment, iv. 114.

appeals, iv. 114.

    to Sheriff Court, iv. 114.

    to Court of Session, iv. 115; xii. 209.

extract and diligence, iv. 115.

expenses, iv. 115.

special actions, iv. 115.

    furthecoming, vi. 103.

    multiplepoinding, iv. 115.

DECENNIAL PRESCRIPTION. *See* Prescription.DECERN; DECERNITURE, iv. 115. *See* Decree; Extract.

Court of Session, iv. 115.

Sheriff Court, iv. 115.

DECIMÆ DEBENTUR PAROCHO, iv. 116. *See* Teinds; Assumption of Thirds; and Augmentation.

- DECIMÆ GARBALES*, iv. 116. *See* Teinds.
- DECIMÆ INCLUSÆ*. *See* *Cum decimis inclusis*.
- DECIMÆ RECTORIÆ*, iv. 116. *See* Teinds.
- DECIMÆ VICARIAE*, iv. 117. *See* Teinds.
- DECLARATION BY PRISONER, iii. 380; iv. 117; ix. 63.  
advicee of law agent, iv. 117.  
sheriff or magistrate, iv. 117.  
examination, iv. 118.  
re-examination, iv. 119.
- DECLARATION, DYING, iv. 204.  
judicial, v. 116.  
of poll, viii. 389; xiii. 46.  
of trust, i. 18.  
of war, xiii. 148.  
on application for warrant to arrest, xiii. 159.  
Stamp Acts, xi. 418.
- DECLARATOR, ACTION OF, iv. 119, 121.  
*See* Actions.  
when necessary, iv. 121.  
when simple declarator competent, iv. 120.  
Sheriff Court—  
procedure, iv. 122.  
of marriage, viii. 259–267, 270.  
aliment, i. 200.  
oath on reference incompetent, ix. 65.  
title to sue, xii. 272.  
witnesses, xiii. 208.  
of partnership, ix. 177.
- DECLARATOR AND INTERDICTION—  
infringement of copyright, iii. 299.  
nuisance, ix. 45.
- DECLARATORY ADJUDICATION, i. 113.
- DECLINATURE, iv. 122.  
on ground of interest, iv. 123, 156; vi. 309.  
relationship between judge and litigant, i. 122; vi. 309.  
in criminal cases, iv. 124; xiv. 25.
- DECREE, iv. 124; vii. 40. *See* Charge; Reponing; Extract; Interlocutor; Suspension; Appeal; Wakening; Reduction; Recall of Decree.  
absolvitor, i. 341; iv. 125; x. 312.  
*ad factum præstandum*, i. 278; iv. 126; xi. 375.  
as evidence, iv. 127.
- DECREE—*continued*.  
by default, iv. 125, 153; x. 54, 78, 306.  
circumduction of the term, iii. 22.  
*cognitionis causa*, iii. 238.  
condemnator, iv. 125.  
dative, iii. 195.  
dismissal, iv. 125, 250.  
English and Irish Courts, vi. 34.  
execution pending appeal, i. 270.  
expenses omitted, i. 15.  
expenses not concluded for, i. 14, 15.  
extracted not appealable, i. 264.  
failure to implement, xii. 218.  
final, i. 277, 280; iv. 124.  
for expenses, iv. 126.  
in absence, i. 14, 15, 279; iv. 125.  
after year and day, i. 15.  
consistorial cases, i. 14.  
counsel unnecessary, i. 14.  
Debts Recovery Court, iv. 114.  
defenders, several, i. 14.  
expenses not concluded for, i. 14, 15.  
*inducia*, i. 15.  
Lanarkshire Sheriff Court, i. 15.  
minute of restriction, i. 14.  
reductive conclusions, i. 14.  
reponing against, i. 15; x. 305.  
reduction, x. 231.  
Small Debt Court, xi. 350.  
suspension, xii. 206.  
*in foro*, i. 280; iv. 125, 154.  
interlocutory, iv. 124; vii. 40.  
interim, iv. 124; vii. 39.  
of constitution, iii. 238.  
of registration, x. 246, 247. *See* Registration.
- DECREE ARBITRAL, i. 298, 301. *See* Arbitration.
- interdict, vii. 25.  
reduction of, i. 301.  
submission by tutor, xiii. 13.
- DECREEET CONFORM, iv. 127.
- DEED—  
adoption of, i. 134.  
blanks in, ii. 145.  
borrowing registered, x. 249.  
by blind persons, ii. 153.  
by Industrial and Provident Societies, vi. 324.  
by minor, viii. 360.  
by pupil, x. 123.  
cancellation of, ii. 283.

- DEED**—*continued.*  
 date of, iv. 86.  
*See Delivery and Acceptance of.*  
 effect of banns on, ii. 25.  
 exception to, v. 132.  
 execution of, iv. 129, 143; xiv. 25.  
   Act, 1874, iv. 130.  
   non-essentials, iv. 130.  
   subscription, iv. 135.  
   by mark, viii. 242.  
   witness, iv. 135.  
   alterations, iv. 136, 137, 172; v. 86.  
   marginal additions, iv. 136.  
   testing clause, iv. 137.  
   notarial, iv. 138.  
   imposition and relaxation of solemnities, iv. 141.  
   holograph writings, iv. 142; vi. 223.  
   testamentary writings, iv. 143; xii. 343.  
     privileged deeds, iv. 143.  
   extract of, v. 198.  
   fraud in reference to, vi. 64.  
   homologation of, vi. 224.  
   improbation of, vi. 259.  
   of arrangement, iv. 128; xi. 241.  
   of obligation lost, iii. 7.  
   of obligation with grantor, iii. 7.  
   of relinquishment, superiority, xii. 157.  
     recorded, xii. 157.  
   of submission, i. 298.  
   production of recorded, ix. 23.  
   proving of the tenor, x. 79.  
   revocation of, x. 340.  
   stamping after execution, xi. 402.  
   to bearer, ii. 144.  
   vitiating, xiii. 125.  
**DEER**, iv. 144; viii. 48; x. 235.  
   game laws, vi. 105.  
   reservations as to, xiii. 180.  
   strayed, vi. 36.  
**DEER FOREST**—  
   leases of, vii. 347.  
**DEFAMATION**, iv. 145. *See Slander.*  
   imputation, iv. 146.  
   innuendo, iv. 149.  
   privilege, iv. 149; viii. 324; xiv. 25.  
   absolute privilege, iv. 149.  
   qualified privilege, iv. 150; viii. 324.  
   *veritas*, iv. 150.  
   criticism, iv. 150.
- DEFAMATION**—*continued.*  
   fair retort, iv. 150.  
   fair report, iv. 151.  
   malice and want of cause, iv. 151; viii. 189; x. 52, 53.  
   issue, iv. 152; vii. 85.  
   counter issues, iv. 152.  
   interdict to prevent, iv. 153.  
   Parliamentary candidates, iii. 343, 344; iv. 153.  
   *solutum* for, xi. 366.
- DEFAMING JUDGES**, ii. 45.
- DEFAULT (JUDICIAL)**, iv. 153, 154.  
*See Decree.*
- DEFAULT IN APPEARANCE**, i. 17.
- DEFEASANCE**, iv. 155.  
   vesting subject to, xii. 124; xiii. 66, 94–97.
- DEFECTIVE TITLE**. *See Title.*
- DEFENCES**, i. 76; iv. 155, 158. *See Lodging; Pleas in Law.*  
   dilatory or preliminary, iv. 156.  
     all parties not called, iv. 157; xii. 354.  
     declinature of judge, iv. 156.  
     incompetency, iv. 156.  
     irrelevancy, iv. 156.  
     *lis alibi pendens*, iv. 157.  
     no title to sue, iv. 157.  
     want of specification, iv. 157.
- joint, iv. 156.  
 no, i. 15.  
   peremptory, iv. 157.  
 Sheriff Court, iv. 158.  
 tendering at bar, i. 14, 280; xiv. 26.  
 action—  
   director's liability, iv. 237.  
   for aliment, i. 195.  
   accounting, i. 42.  
   breach of promise, ii. 212.  
   divorce, iii. 100; iv. 308, 310.  
   forthcoming, i. 317; vi. 102.  
   multiplepoinding, viii. 378.  
   poinding of the ground, ix. 300.
- plea—  
   prescription, ix. 406.  
   personal bar, ii. 27.
- criminal—  
   *alibi*, i. 186; iii. 384.  
   *asleep*, i. 327.  
   self-defence, iii. 384.  
   *to bigamy, bona fides*, ii. 163.

DEFENDER, iv. 158. *See* Appearance ;  
 Defences.  
 additions to number, i. 218 ; xii. 149.  
 and pursuer concurrently negligent, iii.  
 269, 270.  
 caution by, ii. 353, 354.  
 classes, iv. 158.  
 bankrupt, iv. 160.  
 co-defender, iii. 78.  
 heir and executor, iv. 160.  
 insane persons, iv. 159.  
 joint and several, iv. 160 ; ix. 45.  
 mandatory, iv. 161.  
 minor, iv. 159.  
 partners, iv. 161.  
 principal and agent, iv. 160.  
 pupil, iv. 158 ; x. 120.  
 superior and landlord, iv. 161.  
 wives, iv. 159.  
 foreign, vi. 43.  
 title to defend, vii. 33 ; xii. 280, 281.  
*DE FIDELI ADMINISTRATIONE*, ix.  
 60.

**DEFINITION—**

- of bill of exchange, ii. 80.
- of blank bill, ii. 142.
- of *bona fides*, ii. 158.
- bottomry, ii. 197.
- cautionary obligation, ii. 313.
- cheque, ii. 410.
- of contract, iii. 264.
- corrupt practices, iii. 322.
- criminal verdicts, iii. 384.
- divorcee, iv. 307.
- dock, v. 239.
- document of title, iv. 314.
- domicile, iv. 317-320.
- dominus litis*, iv. 330.
- equity as a legal term, v. 67.
- explosive substances, v. 180, 181.
- extract decree, v. 189.
- Factory and Workshop Acts, v. 237.
- heritable proprietor, v. 282.
- heritable securities, vi. 185.
- hypothec, vi. 241.
- lawful day, iv. 89.
- leading questions, iv. 5.
- legacies, vii. 366.
- letter, ix. 368.
- marriage, viii. 244.
- mercantile agent, v. 205.
- money-lenders, xiv. 54.

**DEFINITION—continued.**

- moveables, xi. 10.
- neutrality, xiii. 267.
- perjury, ix. 255.
- pledge, ix. 278.
- promissory note, x. 68.
- seamen, xi. 103.
- securities, xi. 139, 142.
- servitudes, xi. 264.
- ship, xi. 326.
- trust, xii. 326 ; xiii. 9.
- vesting, xiii. 65.
- war, xiii. 146.
- warrantee, xiii. 15.
- way, x. 298.
- will, xiii. 190.
- working days, iv. 195.

**DEFORCEMENT**, iv. 161.

- prevention of diligence, iv. 162.
- qualified officer and assistants, iv. 162.
- carrying out lawful duty, iv. 162.
- performance in lawful manner, iv. 162.
- resistance offered, iv. 161 ; ix. 285.
- warrants protected, iv. 163.
- indictment, iv. 163.
- tribunal, iv. 163.
- prosecutors, iv. 163.
- punishment, iv. 163.

**DEFRAUDING OF CREDITORS**, iv. 113 ; vi. 65.

- the revenue, iv. 163.
- smuggling, ix. 363.

**DEGREES OF KINSHIP**, iv. 163 ; vi. 122.

**DELAY.** *See Mora.*

**DEL CREDERE**, iv. 166.

**DELECTUS PERSONÆ**, iv. 167, 171

- agent, i. 167 ; x. 22, 23.
- broker, ii. 228.
- partnership, iv. 169 ; ix. 164, 167.
- trustees, iv. 169.
- tutors, xiii. 6.
- leases, iv. 167.
- miscellaneous contracts, iv. 170.

**DELEGATED JURISDICTION**, iv. 170.

- See* Commission.

**DELEGATION**, iv. 171. *See* Novation.

- extinction of obligation by, ix. 84.

**DELEGATUS NON POTEST DELE-GARE**, iv. 171.

**DELETIONS**, iv. 172.

- in deeds generally, iv. 136, 172.
- affidavits, i. 155 ; iv. 174.

**DELETIONS—continued.**

holograph writings, vi. 222.  
*mortis causā* deeds, iv. 173; xiii. 198.  
 vitiating deed, xiii. 125.

**DELICT; QUASI-DELICT,** iv. 174.

*damnum fatale*, iv. 86.  
 measure of damages, iv. 64–72, 80.  
 of married women, vi. 240; viii. 298.  
 parent and child, ix. 111.  
 reparation, x. 282.  
 rules in, iv. 80.

**DELINQUENTS, JOINT,** iii. 78; iv. 175.

**DELIVERY (HERITAGE),** vi. 325; xi. 13, 17, 87. *See* Constructive Delivery.  
 of letter, x. 5.  
 of moveables, iv. 181; ix. 5–15; xi. 41, 42, 44.  
 barter or exchange, iv. 182.  
 sale, i. 336; iv. 182; v. 204–210; vii. 21; xi. 42.  
 donation, iv. 185, 338–340; xii. 104.  
 purpose of bailment, iv. 185.  
 damages for non-delivery, iv. 73, 74; xi. 51, 52.  
 stoppage *in transitu*, xii. 22.

**DELIVERY AND ACCEPTANCE OF DEEDS,** iv. 176.

delivery, iv. 176.  
 general rule, iv. 176.  
 exceptions, iv. 176, 333.  
 clause dispensing with, iv. 176.  
 equivalents, iv. 177; x. 343; xi. 42.  
 where deed in grantor's possession, iv. 178; iii. 7.  
 when deed in grantees possession, iv. 178.  
 when deed in third party's possession, iv. 178.

when deed taken in name of third person, iv. 179.

date of, iv. 180.

acceptance, iv. 180.

trust deed for creditors, xii. 340.

**DELIVERY ORDER,** iv. 186, 314; v. 204 *et seq.*

effect of transfer of, iv. 187.

assignation, iv. 187.

completion of right of transferee, iv. 188.

how far negotiable, iv. 188.

effect of transfer, iv. 189.

effect of Sale of Goods Act, 1893, iv. 190.

**DELIVERY ORDER—continued.**

pledge of, iv. 191.  
 securities over goods, xi. 147.  
 stamp duty, xi. 143.  
 forms of, iv. 187.

**DELUSIONS,** vii. 4.**DEMEMBRATION,** iv. 191.**DE MINIMIS NON CURAT PRÆTOR,** iv. 191.**DEMISE OF THE CROWN,** iv. 193; xiv. 26.**DEMISSION BY CLERGYMAN,** iv. 194.**DEMONSTRATIVE LEGACY.** *See* Legacy.**DEMURRAGE,** iv. 194.

cesser clause, iv. 195.  
 charter-party, ii. 403.  
 master cannot abandon claim for, ii. 397.  
 part owner cannot raise action for, vii. 95.

reckoning of time, iv. 89.

**DENIZEN,** iv. 196; viii. 398. *See* Alien.**DENTISTS,** iv. 197.

as jurors, xiii. 253.  
 company as, xiii. 254.  
 criminal responsibility of, xiii. 254.  
 examination of, xiii. 252.  
 liability of, xiii. 254.  
 penalties, xiii. 253.  
 prosecution of, xiii. 253.  
 registration of, xiii. 252.

**DENUNCIATION,** iv. 197. *See* Horning; Imprisonment; Diligence.**DEPENDING ACTION,** iv. 198. *See* Action.

arrestment on, i. 310 *et seq.*

inhibition, vi. 351.

*litis alibi pendens*, iv. 157; viii. 123.

*litis* contestation, viii. 126.

**DEPOSIT; DEPOSITION,** iv. 199; xiv. 26. *See* Consignation.

effect of sequestration of holder, xi. 166.

joint depositaries, iv. 202.

prescription, x. 129; xiv. 71.

risk, x. 349.

with banker for safe custody, i. 391–396.

with innkeeper, vi. 360.

**DEPOSIT RECEIPTS,** iv. 202; i. 380.

*See* Current Deposit Account, iv. 47.

bequest, xii. 89, 101.

**DEPOSIT RECEIPTS—continued.**

donation *mortis causa*, iv. 339.  
lost, iv. 204.  
negotiation, iv. 204; ix. 12.  
no testamentary paper, xii. 104.  
payable to either of two persons or survivor, iv. 203.  
payment, iv. 203.  
stamp duty, iv. 203.

**DEPOSITION—**

abseounding witness, i. 12.  
*See* Commission, Proof by.  
deceased persons in criminal cases, iv. 204.  
deceased bankrupt, xiii. 215.  
witness, xiii. 215.  
upon interrogatories, vii. 47.

**DEPOSITION OF A CLERGYMAN, iv. 205.****DEPOSITORS. *See* Bank; Savings Bank.****DEPREDATION, iv. 196.****DEPRIVATION OF CLERGYMAN, iv. 205.****DEPUTE—**

clerk register, x. 238.  
clerk of justiciary, iii. 52.  
Clerk of the Peace, iii. 58.  
Clerks of Session, iii. 59.  
clerk of teinds, iii. 61.  
lieutenant, viii. 85.  
procurator-fiscal, x. 58.  
prosecutors, x. 63.  
Sheriff clerk, xiii. 276.

**DERELICT, iv. 206.**

lost property, viii. 164.

**DERELICTION OF VALUATION OF TEINDS, iv. 206.****DESCENDANTS, iv. 207, 163; xii. 45, 47.**

alimenting, i. 194.

**DESCRIPTION OF LANDS, v. 285-290.**

in notarial instruments, ix. 28.

will, errors in, xii. 113, 117.

parole evidence, ix. 147.

**DESERTION BY TENANT, iv. 212.**

conjugal, iv. 207; x. 11.

ground of divorce, iv. 207, 309.

protection order, iv. 208.

from army, iv. 208.

from mercantile marine, iv. 210; vi. 106, 209.

from navy, iv. 208; viii. 403; xiii. 258.

of diet, iv. 225.

of infants, i. 1; v. 181.

of service, iv. 210.

**DESIGNATION, iv. 212.**

will, errors in, xii. 113-117.  
parole evidence, ix. 147.  
globe, etc., iv. 213.

**DESIGNS, iv. 213.**

assignations of, i. 338.  
extinction of copyright, iv. 216.  
infringement of designs, iv. 217.  
Merchandise Marks Act, viii. 325.  
registration, iv. 213, 214.

effect of registration, iv. 215, 216.  
rights of proprietor, iv. 215.  
requirements, iv. 214.

**DESTINATION. *See* Vesting; Disposition; Infestment.**

effect of consolidation, iii. 226.

in bonds, etc., vii. 375.

in conveyances, xii. 69.

in deed of entail, v. 33.

in deposit receipt, xii. 104.

feu-charter, v. 284; xii. 59.

in general dispositions, xii. 64, 65.

in marriage-contract, viii. 286, 292; xii. 71-73.

in notarial instrument, ix. 31.

institute under, vii. 22.

interpretation, xii. 98-101.

of legacies, vii. 380, 381-385.

parole evidence, ix. 148.

substitute under, xii. 34, 35, 36.

to bairns, i. 377.

to heirs and bairns, vi. 176.

to husband and wife, iii. 205; viii. 120.

to parent and child, iii. 207; viii. 119.

to strangers, iii. 208; viii. 118.

with prohibitions, xii. 65, 66, 67, 68.

**DESUETUDE, iv. 218.****DETENTION. *See* Insanity; Retention.**

of ship, iv. 194.

unlawful, iii. 378.

**DEVIATION OF SHIP, iv. 219.**

marine insurance, iv. 219; viii. 228.

**DEVOLUTION—**

in arbitration, i. 298.

actions, i. 326.

entail, v. 39.

ecclesiastical appointments, vii. 248.

**DIES CREDIT : DIES VENIT, iv. 222.****DIES DOMINICUS NON EST JURIDICUS, iv. 223.****DIES FASTI : DIES NEFASTI, iv. 223.**

- DIES INCEPTUS PRO COMPLETO HABETUR*, iv. 224.
- DIES INCERTUS PRO CONDITIONE HABETUR*, iv. 224.
- DIES INTERPELLAT PRO HOMINE*, iv. 224.
- DIET.** *See* Adjournment.  
civil actions, iv. 224.  
continuation of the, iii. 260.  
criminal proceedings, iv. 224.  
first and second diets, iii. 382, 383.  
desertion, iv. 225.
- DIGEST**, iv. 226. *See* Civil Law; *Corpus juris*; Roman Law.
- DIGNITARIES, ECCLESIASTICAL**, iv. 226.
- DIGNITIES**, iv. 226, 362, 364; viii. 243; xi. 251, 444, 445. *See* Peerage.
- DILAPIDATION OF BENEFICES**, ii. 49; iv. 227.
- DILATORY DEFENCES.** *See* Defences.
- DILIGENCE**, iii. 268; iv. 21, 85; ix. 1; x. 288. *See* Powers and Duties.  
of creditors, iv. 227; xii. 217. *See* Arrestment; Charge; Sist of Diligence; Poinding.  
against the person, iv. 228; xi. 253.  
letters of four forms, iv. 229.  
letters of horning, iv. 229; vi. 228.  
execution under Personal Diligence Act, iv. 230.  
*meditatio fugæ* warrant, iv. 230; viii. 319-323.  
abuse, iii. 42, 43.  
against property, iv. 232.  
adjudication, iv. 232.  
ranking *pari passu*, x. 28.  
adjudication in implement, iv. 232.  
inhibition, iv. 233; vi. 359.  
poinding of ground, iv. 233; ix. 298; xii. 161, 162.  
maills and duties, iv. 233.  
ranking and sale, iv. 233.  
abuse, iii. 44, 45; iv. 235; vi. 248.  
alienations in defraud, vii. 20.  
joint proprietors, vii. 93.  
against moveables, iv. 233.  
arrestment and furthecoming, iv. 233.  
poinding, iv. 234; ix. 292.  
sequestration of effects, iv. 234.  
mercantile sequestration, iv. 234.  
abuse, iii. 41, 42.
- DILIGENCE**—*continued.*  
against moveables—*continued.*  
unpaid calls of railway companies, and rolling stock protected from, x. 167, 168.  
after debtor's death, iv. 234.  
alienations in defraud, iv. 235; vii. 20.  
equalising, iv. 235; xii. 184.  
extract registered deed, x. 249.  
effect of notour bankruptcy in equalising, ii. 7; xi. 199.  
suspension, iv. 236.  
accepting service where diligence used, i. 26.  
amending record to validate, i. 220.  
competing, ix. 301.  
debts recovery judgment, iv. 115.  
effect of multiplepoinding on, viii. 383.  
execution of, v. 139, 140; xii. 152.  
extract of deeds warrant for, v. 198.  
interrupting prescription, ix. 407.  
to recover documents, etc., iii. 107; x. 65; xi. 378; xii. 207.  
election petition, v. 9.
- DIPLOMAS**—  
foreign, xiii. 250.
- DIRECTION**—  
clause of, vi. 335; x. 256.  
by testator, xiii. 199.
- DIRECTORS' LIABILITY ACT**, 1890, iv. 236. *See* Company.
- conditions as to action, iv. 236.  
defences, iv. 237.
- DISABILITIES.** *See* Powers and Duties.
- DISCHARGE**, iv. 237. *See* Acknowledgment; *Confusio*; Exoneration and Discharge.  
*apœcha trium annorum*, i. 242.  
by assignee of life policy, viii. 102.  
by *curators bonis*, iv. 238; vii. 199; xii. 363.  
by executors, iv. 238; v. 143.  
by fairs in succession, iv. 238.  
by legatees, vii. 389; xii. 120, 357.  
by liferenter and fiar, iv. 238.  
by liquidators, iv. 238.  
by married women, iv. 238.  
by minors, iv. 237.  
by pupils, iv. 237.  
by residuary legatee, xii. 358.  
by trustees, iv. 238.

DISCHARGE—*continued.*

by trustees *in cession*, iv. 238.  
 by trustees in sequestration, iv. 238.  
 by tutors nominate, xiii. 12, 13, 15.  
 of aliment, i. 194.  
 of alimentary interest, i. 205.  
 of arrestments, i. 320.  
 of bills of exchange, ii. 106.  
 of building restrictions, ii. 236.  
 of casualties, ix. 37; xii. 178, 182.  
 of cautionary obligations, ii. 339–347.  
 of claim of damages, iv. 70.  
 of conquest, iii. 213.  
 of courtesy, xii. 50.  
 of factor, v. 211.  
 of feu-duties, ix. 37.  
 of indenture, i. 290; xiii. 228.  
 of legitim, viii. 29; xii. 78, 79.  
 of obligations, ix. 83.  
 of real money burdens, ii. 246.  
 of securities—  
   bond, ii. 172.  
   bond by magistrates, iii. 130.  
   bond and assignation, ii. 174.  
   heritable, ii. 180; iv. 239.  
   not recorded in debtor's lifetime, ix.  
     31.  
 of servitudes, xi. 281.  
 of terce, xii. 49.  
 title to exclude, xii. 267.  
 of trustees, xii. 361, 362.  
 in bankruptcy. *See* Bankrupt.  
 stamp, iv. 240.

## DISCHARGING FIREARMS RECKLESSLY, v. 331.

## DISCLAMATION, iv. 246.

## DISCOUNT—

  legacy duty, viii. 7.  
 sequestration, xi. 220.  
 succession duty, viii. 26.  
 trade, xi. 28.

## DISCUSSION, ii. 59, 334; iv. 246.

DISEASE OF ANIMALS, iii. 243; iv. 62.  
 Act, 1903, xiv. 26.

## DISEASE, INFECTIOUS, x. 98.

  of workmen through unhealthy occupation, xiii. 222.

  notification of, x. 116; xiii. 255.

DISENTAIL. *See* Entail.

DISHONEST APPROPRIATION. *See*  
   Theft; Breach of Trust.

## DISHONESTY, i. 171.

DISHONOUR OF BILL. *See* Bill of Exchange.

## DISINTERMENT, ii. 266.

## DISJOINING ACTIONS, iii. 202.

DISJUNCTION AND ANNEXATION, iv.  
 248.

## DISJUNCTION AND ERECTION—

  erection *quoad omnia*, iv. 249.  
  erection *quoad sacra*, iv. 249.

DISMISSAL. *See* Decree.

  from Her Majesty's forces, iv. 250.  
  from navy, xiii. 259.  
  from service, vii. 207.  
  of apprentice, i. 290.  
  of county officials, iii. 352.

DISOBEDIENCE. *See* Contempt of Court; Master and Servant; Apprentice.

## DISORDERLY CONDUCT, ii. 210.

## DISORDERLY HOUSE, iv. 251.

  Immoral Traffic (Scotland) Act, xiv. 39.

DISPARAGEMENT. *See* Superiority.

## DISPENSATION, CLAUSE OF, xiii. 38.

DISPOSITION, iv. 253–298. *See* Infestation; Warrantice.

  consideration, iii. 217.

  consent to, iii. 215.

  destination in, vii. 22; xii. 64, 65, 69.

  containing money burden, ii. 239.

  parts and pertinents, ix. 182.

  delivery of, xi. 13.

  assignation of rents, i. 339.

  assignation of writs, i. 339.

  infestation since Act 1874, iv. 278.

  general, v. 309.

  assignations of personal titles, iv. 289.

  transference of personal title, iv. 290.

  assignations to personal rights, iv. 295.

  to prejudice of creditors, xi. 124.

  of property to superior, iv. 283.

  of superiority, iv. 280; xii. 167, 182, 183.

  warrantice, xii. 183.

  blanks in, xiii. 198.

  absolute, i. 18–25; ix. 12, 143, 144; xi.  
     143; xii. 278, 332.

*See* Back Bond.

  effect of grantee's bankruptcy, iv. 298.

  hypothec, vi. 243.

  inhibitions, xi. 122.

  proof of, xii. 334–336.

  sale under, ix. 377; xi. 12, 145.

  searches, xi. 122.

**DISPOSITION**—*continued.*

**absolute**—*continued.*

succession, xii. 41.

**Stamp Acts**, xi. 443.

and settlement. *See Will.*

in security. *See Bond and Disposition in Security.*

*omnium bonorum*, ii. 364; iv. 299.

**DISPOSITIVE CLAUSE**, v. 282, 305; xii. 62, 63.**DISPUTES BETWEEN EMPLOYERS AND WORKMEN**—

**Conciliation Act**, 1896, viii. 309.

**DISQUALIFICATION**—

of arbiter, i. 295; xiv. 7.

of candidate—

corrupt practicees, iii. 331, 332.

illegal practices, iii. 335.

of judge, iv. 122.

voters—

county council, iii. 365.

corrupt practices, iii. 331, 332.

illegal practices, iii. 335.

municipal, viii. 385.

parish council, ix. 122.

parliamentary, vi. 46; ix. 135; xiv. 36.

School Board, ii. 94.

**DISSENT OF PUPIL**, xiii. 1.**DISSENTING CHURCHES**, xiii. 128; v. 58.**DISSOLUTION**—

of company. *See Company.*

of friendly societies, vi. 84.

of Parliament, iv. 299; ix. 127.

of partnership, ix. 169.

**DISTRESS**—

double, iv. 348; viii. 377.

**DISTRIBUTION OF BUSINESS ACT**—

Bill Chamber, ii. 70.

**DISTRIBUTION OF TRUST ESTATE**, xii. 115, 125; xiii. 88, 89.**DISTRICT COMMITTEE**, iv. 302; iii. 349; xiv. 26.

public health, iv. 304.

management of roads and bridges, iv. 303.

provisions applying, iv. 302.

**DISTRICTS**, iv. 300.

county council, general, iii. 349; iv. 303.

schools, iv. 370.

special drainage, iv. 300.

special water, iv. 300.

**DISTRICTS**—*continued.*

**special**—

sanitary purposes, iv. 301.

lighting, iv. 301.

provision and maintenance of public

baths, etc. etc., iv. 301.

scavenging and removal of dust, etc.,

iv. 301.

**DISTURBANCE OF PUBLIC WORSHIP**, xi. 2.**DITCH**, ix. 276.**DIVESTING**. *See Vesting.*

**DIVIDEND**—

Apportionment Act, i. 284.

by company, vii. 142, 143.

in liquidation, xii. 185.

equalising, v. 66.

*in cessio*, ii. 370 *et seq.*

in sequestrations, xi. 227, 228.

income tax on, vi. 295.

warrants, iv. 304.

register of unclaimed, i. 39.

arrestment of unclaimed, xi. 228.

**DIVISION**—

brieve of, ii. 224.

benefit of, ii. 57, 335.

power of, xiii. 88, 90.

**DIVISION AND SALE, ACTION OF**, iv. 304, 306; i. 72.

commonty, iii. 142; iv. 306.

division, iii. 138; iv. 306.

sale, iii. 138; iv. 307.

**DIVISIONS**. *See Court of Session.*

**DIVORCE**, iv. 307; i. 137, 138. *See Expenses.*

definition, iv. 307.

grounds of, iv. 307.

title to sue or defend, iv. 307; xii. 276,

277; xiv. 32.

practice in actions, iv. 307.

adultery, iv. 308; xiv. 26, 32.

defences, iv. 308.

evidence, iv. 308.

desertion, i. 138; iv. 207, 309; xiv. 27.

jurisdiction, iv. 310; vii. 224.

recognition of foreign, iii. 101; iv. 311.

effect of, iv. 311.

on property, iv. 312.

legal rights, iv. 312; iii. 204; viii. 271;

xii. 82, 241; xiii. 68.

conventional provisions, iv. 313, 337; xiii. 100.

- DIVORCE—*continued.*
- reduction, iv. 313.
  - aliment *pendente lite*, i. 200.
  - aliment after, i. 200.
  - character of the parties, ii. 388.
  - children or next-of-kin defending, v. 147.
  - co-defender, i. 138, 139; iii. 78.
  - collusion, iii. 100.
  - condonation, iii. 179.
  - connivance, viii. 34.
  - custody of children, iv. 53.
  - defences allowed on reclaiming note, xiv. 25.
  - domicile of parties, iv. 327.
  - form of summons, xii. 146.
  - oath of calumny, ii. 280; ix. 59.
- DOCKMASTER, ix. 356.
- DOCK WARRANTS, iv. 314; xii. 30.
- assignation of, i. 336.
- DOCKS. *See* Ports and Harbours.
- DOCQUET—
- by notary, iv. 140; vi. 224.
  - of accounts, i. 46.
- DOCTOR. *See* Medical Practitioner.
- DOCUMENTS—
- as evidence. *See* Evidence.
  - cancellation of, ii. 283.
  - diligence for recovery of. *See* Diligence.
  - foreign, iii. 111.
  - forged, ii. 30.
  - costs, ii. 60.
  - of liquidated company, xii. 185.
  - School Board elections, xi. 96.
  - parliamentary elections, ix. 137.
  - of debt—
    - Factors Acts, v. 204–210.
- DOCUMENT OF TITLE—
- definition, iv. 314.
  - instruments included, iv. 314.
  - pledge of, v. 207.
- DOG ACT, 1871, xiii. 244.
- DOG—
- cruelty to, iv. 11.
  - dangerous, i. 223–225; x. 61.
  - destroying, xi. 304; xiii. 144.
  - hounding, on person, i. 328.
  - injuries by watch-, i. 224, 225.
  - licence, iv. 315.
  - blind persons, iv. 315.
  - shepherds', iv. 315; xi. 304.
  - young dogs, iv. 316.
- DOG—*continued.*
- mad, xiii. 244.
  - stray, i. 225; iii. 237; xiii. 144.
  - unclaimed, xiii. 244.
  - used for draught, iv. 14.
- DOLE, iv. 316.
- DOLUS MALUS, iv. 316.
- dolus bonus*, iv. 317.
- DOMESTIC SERVANTS, viii. 308.
- DOMICILE, iv. 318.
- definition, iv. 320; xii. 342.
  - independent persons, iv. 321.
  - of choice, iv. 321.
  - of origin, iv. 321.
  - change of, iv. 323.
  - dependent persons, iv. 323; ii. 40.
  - ascertainment of, iv. 325.
  - legal persons and corporations, iv. 326; vii. 150.
  - of citation, iv. 327.
  - matrimonial, iv. 327.
  - of ambassador, i. 213.
  - of bastard, ii. 40.
  - of consul, iii. 241.
  - of railways, x. 172.
  - of trust, xii. 342, 343.
  - interpretation, xii. 342, 343.
  - international law, xii. 134–136.
- DOMINANT TENEMENT, iv. 329; xi. 265.
- DOMINIUM DIRECTUM—DOMINIUM UTILE, iv. 329. *See* Superiority
- DOMINIUM EMINENS, iv. 329.
- DOMINUS LITIS, iv. 330.
- DONATION, iv. 333. *See* Revocation.
- beneficium competentiæ*, ii. 56; v. 335.
  - proof of *animus donandi*, iv. 333–335
  - transmission must be *habili modo*, iv. 333–335, 185; xi. 7.
  - warrandice, xiii. 154.
  - by minor, viii. 360.
- DONATION *INTER VIRUM ET UXOREM*, iv. 336; xi. 109.
- reasonable provision is **not** donation, iv. 337.
  - by whom, iv. 337.
  - when revocation may be made, iv. 337; viii. 284, 303; xii. 341.
  - how revocation is made, iv. 337.
  - right to revoke barred, iv. 337, 313; i. 138.
  - nature of donee's right, iv. 338.

- DONATION *INTER VIVOS*, iv. 333 ; ii. 243.
- DONATION *MORTIS CAUSA*Â, iv. 338 ; xii. 103, 104 ; xiv. 27.  
bills of exchange, ii. 95.  
entail duty, iv. 340.  
revocation, xii. 103, 104.
- DONATION, PRESUMPTION AGAINST, iv. 340 ; vii. 396 ; x. 4.
- DOOM, iv. 346.
- DOOR, CHALKING OF, ii. 378.
- DOORS, CLOSED, iv. 347.
- DOORS, LETTERS OF OPEN, ix. 96.
- DOUBLE DISTRESS, iv. 348 ; viii. 377.
- DOUBLE INSURANCE—  
marine, viii. 223.
- DOUBLE LEGACIES, vii. 394 ; xii. 118.  
*See* Legaey.
- DOUBLE RANKING IN BANKRUPTCY, iv. 351.
- DOUBLE SECURITIES, ii. 309.
- DOUBLE TITLE, iv. 352. *See* Consolidation.  
adversity of interest, iv. 353.  
where no adversity of interest, iv. 354.  
prescription, ix. 402.
- DOUBLES OF SUMMONSES, iv. 355.
- DOVECOT, iv. 355 ; ix. 265, 266.
- DOWAGER, iv. 355.
- DRAFT (BANKER'S DRAFT), iv. 356.
- DRAFTS—  
reference to, ii. 146.  
of will, vii. 372 ; xii. 90, 92 ; xiii. 193, 194.
- DRAINAGE, iv. 356.  
district special, iv. 300.  
of houses, x. 105.  
inferior ground must receive, iv. 356.  
interruption of, xiii. 181.  
of marsh, xiii. 166.  
outfalls, iv. 357.  
tramway construction, xiii. 284.  
water, xiii. 163–165.
- DRAMAS—  
copyright, iii. 301.  
licensing of, ii. 381.
- DRAWINGS—  
copyright, iii. 308.
- DRAWN TEIND, iv. 357.
- DREDGING, xi. 98.
- DRILLING (ILLEGAL), iv. 358.
- DRIVING—  
furious and reckless, vi. 99.
- DROVE ROAD, iv. 358 ; i. 86.
- DRUGGING, iv. 358 ; iii. 376.
- DRUGGIST. *See* Apothecary.
- DRUGS—  
adulteration of, xi. 58.
- DRUNKARDS, HABITUAL, iv. 159 ; xiv. 27. *See* Inebriates.
- civil, iv. 359 ; xiii. 244.
- criminal, iv. 361 ; xiii. 245.
- DRUNKENNESS, vii. 48, 50.  
penalty for, viii. 68.
- DRY MULTURE, iv. 362.
- DRYING GREENS AND GROUNDS—  
provision and maintenance of, iv. 301 ; ii. 41.
- DUELLING, iv. 362.
- DUES—  
fee fund, v. 254.
- DUKE, iv. 362.
- DUMB PRISONERS—  
declaration by, iv. 119.
- DUMB WITNESSES, xiii. 297.
- DUNDEE—  
corporation of, ix. 307.  
Police Court, ix. 319.
- DUNG, iv. 363.
- DUPLICATE—  
of lost bill, ii. 111.
- DUST AND ASHES—  
removal of, iv. 301.
- DUTIES. *See* Powers and Duties.
- DUTY. *See* Estate Duty ; Inhabited House Duty ; Stamp Act.  
account, i. 43.  
dutiable amount, i. 45.  
corporation, iii. 314.  
customs, iv. 60.  
estate, v. 97 ; xii. 133.  
under Finance Act, 1894, v. 99.  
inventory, vii. 56.  
settlement estate, v. 102.  
succession—  
*debita fundum*, iv. 109.
- DUTY TO DISCLOSE, vi. 58.
- DWELLING-HOUSES—  
artizans and labourers', i. 327.  
citation at, iii. 25.  
working classes, vi. 235 ; i. 327.  
letting lodgings, x. 101.  
unhealthy, vi. 238.  
underground, x. 102.
- DYEING WORKS, v. 222.

- DYING DEPOSITION. *See* Deposition by Deceased Persons.
- DYVOUR, iv. 363.
- EARL, iv. 364. *See* Dignities; Peerage; Precedence.
- EARNEST, iv. 365; i. 323; vi. 205; viii. 143.
- EARNINGS OF BANKRUPT, ii. 54.
- EAST INDIA STOCK, xii. 372.
- EAVESDROP, iv. 365.
- EAVES-DROPPERS, iv. 366.
- ECCLESIASTICAL ASSESSMENTS, xiv. 27.
- EBBARTRY, ii. 34.
- EDBuildings and Glebes Acts, iv. 367. *See* Church; Glebe.
- EDIGNITARIES, iv. 227.
- EDICT *NAUTÆ, CAUPONES, STABULARII*, viii. 400.
- EDICTAL CITATIONS, iii. 26, 27, 28. against curators, iv. 42. arrestment and forthcoming, i. 312. charge, ii. 390, 391. wakening action, xiii. 146.
- EDINBURGH, CORPORATION OF, ix. 306.
- EDPolice Court, ix. 318.
- EDUniversity, xiii. 41.
- EDUCATION, iv. 368. *See* School Board; Curator; Pupil; Minor; Tutor. constitution of school districts, iv. 370. supply of school accommodation, iv. 370. not bound to supply books for children, xiv. 29.
- Scotch Department, iv. 371.
- election of School Boards, iv. 371.
- power and duties of School Board, iv. 372.
- religious teaching, iv. 373.
- School Board finance, iv. 373; x. 192.
- grants from Imperial Revenue, iv. 374; xiv. 28.
- school board teachers, iv. 375.
- higher class public schools, iv. 376.
- technical schools, iv. 376.
- compulsory; and protection of children, iv. 377.
- employment and attendance of children, xiv. 28.
- industrial and reformatory schools, iv. 379.
- EDUCATION—*continued.*
- blind and deaf-mute children, iv. 377; ix. 338.
- pauper children, ix. 338.
- EDUCATIONAL ENDOWMENTS ACT, 1882, iv. 382.
- EEL FISHING, vi. 23.
- EGGS OF BIRD OF GAME, viii. 47. swans, xii. 222.
- wild duck, xiii. 190.
- woodcock, xiii. 221.
- EGYPTIANS, iv. 383.
- EIK TO A CONFIRMATION, iv. 383; i. 133; iii. 196. *See* Confirmation; Inventory.
- EJECTION, iv. 384. *See* Removing; allotments, i. 210.
- EJECTION AND INTRUSION, iv. 385; xiii. 124.
- ELDERS—
- seats in churches, xi. 128, 131.
- ELECTION. *See* County Council; Municipal Elections; Parish Council Elections; Parliamentary Elections; School Board Elections; University Elections; Ballot; Corrupt and Illegal Practices; Franchise.
- approbate and reprobate, iv. 386–392; xii. 104–106; xiv. 29.
- circumstances applying, iv. 386.
- intention must be clear, iv. 387.
- subject to be renounced, and consideration for renunciation, iv. 388.
- donee must be free, iv. 388.
- general rules of international law, iv. 388.
- when must be made, iv. 389.
- effect of, iv. 389.
- how enforced, iv. 391.
- how far can deed be founded on by reprobator? iv. 391.
- funds set free, xii. 79, 80.
- reducible by minor, xii. 106.
- agent, iii. 366; viii. 388; ix. 132.
- expenses, iii. 335, 340.
- of bailie, i. 377.
- of commissioners in bankruptcy, xi. 195.
- of Scottish representative peers, ix. 242.
- of trustee in bankruptcy, xi. 193, 194.
- petition (parliamentary), v. 1.
- who may be respondents, v. 2.

**ELECTION—continued.**

petition (parliamentary)—continued.  
 grounds of, v. 7.  
 time and amendment of, v. 2.  
 form and how presented, v. 4.  
 service, v. 4.  
 security, v. 4.  
 how petition proceeds, v. 5.  
 abatement, v. 5.  
 withdrawal, v. 6.  
 non-opposition of respondent, v. 6.  
 special case, v. 7.  
 procedure in a recount, v. 7.  
 scrutiny, v. 7.  
 evidence—particulars, v. 9.  
 diligence to recover documents, v. 9.  
 witnesses, v. 10.  
 certificate of indemnity, v. 10.  
 relief, v. 10.  
 public prosecutor, v. 10.  
 costs, v. 11.  
 report to speaker by courts, v. 11.  
 civil actions for penalties, v. 12. *See*  
 Corrupt and Illegal Practices.

petition (municipal, county council, etc.),  
 v. 13.  
 grounds, v. 13.  
 petitioners, v. 14.  
 respondents, v. 14.  
 to whom presented, v. 14.  
 service, v. 14.  
 time for petitioning, v. 14.  
 security for costs, v. 15.  
 notice and place of trial, v. 15.  
 amendment, v. 15.  
 withdrawal, v. 15.  
 abatement, v. 16.  
 scrutiny lists, v. 16.  
 procedure at trial, v. 16.  
 determination of Court, v. 16.  
 witnesses, v. 17.  
 relief, v. 17.  
 prosecution of offenders, v. 18.  
 expenses, v. 18.  
 provision as to new election, v. 18.  
 civil action for penalties, v. 18.

**ELECTORS. *See* Election.**

county council, vi. 54.  
 municipal, vi. 53.  
 parish council, vi. 54.  
 parliamentary, vi. 46.  
 School Board, vi. 54.

**ELECTORS—continued.**

threats against, xii. 259.  
 universities, xiii. 44.  
**ELECTRIC LIGHTING**, v. 19.  
 borrowing powers, xiv. 29.  
**ELGIN—**  
 boundaries, xi. 120.  
**EMANCIPATIO**, v. 19.  
**EMBARGO**, v. 20.  
**EMBASSY**. *See* Ambassador.  
**EMBEZZLEMENT**, v. 21; ii. 214. *See*  
 Breach of Trust.  
 post office offences, ix. 370.  
**EMOLUMENTS—**  
 procurator-fiscal, x. 58.  
**EMPHYTEUSIS**, v. 21.  
**EMPLOYERS—**  
 intimidation of, i. 328.  
 Employers and Workmen Act, 1875, iv.  
 211; viii. 306.  
 Employers and Workmen Conciliation  
 Act, 1896, viii. 309.  
 Employers' Liability Act, 1880, v. 22;  
 x. 297; xii. 300.  
 not applicable to seamen, xi. 103. *See*  
 Master and Servant; Sub-Con-  
 tractor.  
 Employers' Liability Act, 1882, v. 23.  
 Truck Act, xii. 321-325.  
 Workmen's Compensation Act, 1897,  
 xiii. 222-224.  
**EMPLOYMENT—**  
 common, iii. 271; v. 22.  
 election, illegal, iii. 336.  
 Factory and Workshop Regulations,  
 v. 221.  
**EMULATION**, i. 154.  
**ENCLOSURES. *See* Fences.**  
 breaking, ii. 216.  
**ENDORSEMENT**. *See* Bill of Exchange;  
 Bill of Lading; Cheque.  
**ENDOWMENTS—**  
 educational, iv. 382.  
**ENGLAND**, i. 12.  
 abeyance, i. 10.  
 accommodation bill, i. 38.  
 act and warrant, i. 54.  
 act of bankruptcy, i. 56.  
*actio personalis moritur cum persona*, i. 67.  
*actio quanti minoris*, x. 125.  
 adherence, i. 88.  
 adjudication in bankruptcy, i. 111.

ENGLAND—*continued.*

administration letters of, i. 124.  
affidavit, i. 155.  
affinity, i. 160.  
affray, i. 162.  
agency, i. 164, 169.  
alimentary interest, i. 205.  
*amicus curiae*, i. 221.  
antenuptial debts of married women, i. 239, 241.  
arson, i. 324.  
assize, i. 341.  
attainder, i. 345.  
*aval*, i. 362.  
backing a warrant, i. 370.  
bail, i. 373.  
bank notes, i. 389.  
banker's lien, i. 393.  
baron and feme, ii. 33.  
barratry, ii. 35.  
battery *pendente lite*, ii. 42.  
bearer bonds, ii. 44.  
*beneficium competentiae*, ii. 54.  
bestiality, ii. 64.  
bigamy, ii. 65.  
bill of lading, ii. 130, 132.  
bill of sale, ii. 133.  
bills of exchange, ii. 83, 123, 102.  
blank bonds, ii. 145.  
blank transfers, ii. 147.  
Board of Trade, xii. 289.  
bottomry, ii. 198, 200.  
bought and sold note, ii. 202.  
breach of promise of marriage, ii. 213.  
breaking bulk, ii. 216.  
brocage, ii. 225.  
broker, ii. 232.  
building societies, ii. 238.  
*caveat emptor*, ii. 354.  
certificate of banns, ii. 24, 25.  
carrier, ii. 301.  
cautionary obligations, ii. 328, 340.  
certificate of judgment, ii. 355.  
challenge, ii. 379.  
Chamberlain of, ii. 382.  
Chancellor, ii. 382.  
character of the parties, ii. 388.  
character to servant, ii. 389.  
charitable trusts, ii. 393.  
charter-party, ii. 398, 401, 402, 406.  
chartered accountant, ii. 408.  
Chiltern Hundreds, iii. 5.

ENGLAND—*continued.*

chimney sweepers, iii. 7.  
circumvention, iii. 23.  
clerk of the Crown, iii. 52.  
codification, iii. 82.  
collision, iii. 95, 98.  
condonation, iii. 181.  
confidential communications, iii. 183–186.  
consideration, iii. 217.  
Contagious Diseases Acts, iii. 243.  
contempt of Court, iii. 252, 254.  
contingent debt, iii. 260.  
copyright, iii. 291, *et seq.*  
corporations, vi. 314.  
corporeal and incorporeal, iii. 317, 318.  
Court of Chivalry, iii. 369.  
Court of Probate, iii. 196.  
criminal conversation, iii. 376.  
curtilage, iv. 49.  
ey-près, iv. 61.  
civil death, iv. 97.  
defamation, iv. 147, 148.  
defeasance, iv. 156.  
del credere, iv. 166.  
delivery of moveables, iv. 182.  
deposit of share certificate, ii. 149.  
depositation, iv. 202.  
document of title, iv. 315.  
domicile, iv. 318, *et seq.*  
*dominus litis*, iv. 330.  
dowager, iv. 355.  
eavesdropper, iv. 367.  
election petition, v. 8.  
equity, v. 74.  
evidence in, ii. 61.  
extradition, v. 200.  
fixtures, vi. 24.  
    agricultural tenant, vi. 28.  
    machinery, vi. 26, 27.  
    removing buildings, vi. 28.  
gaming and betting, vi. 109, 113.  
goodwill, vi. 128.  
guarantee (mercantile), vi. 150, 151.  
half blood, vi. 159.  
highways, vi. 197.  
hiring (moveables),  
    hirer's obligations, vi. 201.  
(service)  
    constitution of contract, vi. 204.  
    duration of contract, vi. 206.  
    implied contract, vi. 205.

## ENGLAND—continued.

(service)—continued.

- master's liability for servant's contracts, vi. 215.  
 master's obligation, vi. 211.  
 pasturage of cattle, vi. 220.  
 holidays, bank, vi. 221.  
 housebreaking, vi. 235.  
 houseletting, xiii. 63.  
 incorporation, vi. 314.  
 intoxication, vii. 49.  
 invoice, vii. 65.  
 joint adventure, vii. 93.  
*Judgment Extension Act*, vii. 169.  
*Jus quæsitum tertio*, vii. 252.  
 law agent, vii. 319, 324.  
 legacies, vii. 396, 397.  
 legacies, extrinsic evidence, vii. 399.  
 legitim, viii. 30.  
 legitimation, viii. 33.  
*lenocinium*, viii. 35.  
 licence to kill game, viii. 49.  
 lien, viii. 78, 80, 82.  
 life insurance assignment, viii. 101–102,  
     103–108.  
 log-book, viii. 155.  
 lottery, viii. 165.  
 marine insurance,  
     return of premium, viii. 241.  
     seaworthiness, viii. 226.  
 marriage, viii. 245.  
     ceremony essential, viii. 255, 259, 262.  
     cohabitation, viii. 245.  
     consanguinity and affinity, viii. 249,  
         250.  
     Gretna Green, viii. 268.  
 impotence, viii. 245.  
*Marriage Notice Act*, ii. 25.  
 married women's policies of assurance,  
     viii. 301.  
 minerals, wrongful working or abstraction  
     of, viii. 346.  
*munus publicum*, viii. 390.  
*nautæ, caupones, stabularii*, viii. 400.  
 negotiable instrument, ix. 4–9.  
     bank notes, ix. 12.  
     by corporations, ix. 6–7.  
     pledge in fraud, ix. 10.  
     retention, ix. 11.  
*nudum pactum*, ix. 103.  
 nuisance, ix. 38.  
     pursuer, ix. 44.

## ENGLAND—continued.

- obligation, ix. 78.  
*occupatio*, ix. 89.  
*pactum de quota litis*, ix. 105.  
 paraphernalia, ix. 109.  
 parole evidence, ix. 140.  
 partnership,  
     joint liability, ix. 160.  
 patent, ix. 199, *et seq.*  
 perjury, ix. 258.  
     personal bar, ii. 27.  
 pilot, ix. 268, 271.  
 poor law, ix. 342.  
 ports and harbours, ix. 353.  
*præpositura*, ix. 379.  
 preferential payments in bankruptcy, ix.  
     389.  
 probate, vii. 57.  
 railway,  
     carriage of goods, x. 147.  
 ranking bills in bankruptcy, ii. 123.  
 removal of pauper to, ix. 342.  
*res ipsa loquitur*, x. 290, 293.  
 Roman law in, x. 384.  
 sale of heritage, xi. 4.  
     agent purchasing, xi. 9.  
     specific implement, xi. 23.  
 sale of goods, xi. 25.  
     breach of contract, xi. 52.  
     conditions and warranties, xi. 30, 35.  
     effects of contract, xi. 39, 40.  
     formalities of contract, xi. 25.  
     performance of contract, xi. 34.  
     sale by sample, xi. 36.  
     stoppage *in transitu*, xi. 49; xii. 27, 31.  
     subject matter of contract, xi. 26.  
     the price, xi. 28, 29.  
     unpaid seller's rights, xi. 38.  
 salvage, xi. 67, 84, 85.  
 sea-shore, xi. 99.  
 securities, xi. 151, 152.  
 seduction, xi. 163.  
 shipping,  
     majority of owner's can use ship, xi. 330.  
     mortgagees can sell privately, xi. 329.  
     no preference for necessaries supplied  
         to ship, xi. 329.  
     second mortgagees, xi. 329.  
 solatium, xi. 368.  
 specific performance, xi. 376.  
 support, xii. 197, 201.  
 treason, xii. 305.

ENGLAND—*continued.*

treason, misprision of, xii. 308.  
 Truck Acts, xii. 321.  
 tug and tow, iii. 98.  
 usage, xiii. 48, 50.  
 vexatious actions, xiii. 119.  
 violating sepulchres, xiii. 123.  
 vicious intromission, xiii. 128.  
 waifs and strays, xiii. 143.  
 warrant to arrest, xiii. 160.  
 warren, xiii. 163.

ENGRAVINGS, iii. 306. *See* Paintings and Pictures.

ENGROSSE, v. 23. *See* Forestalling.

ENLISTMENT, v. 23. *See* Army; Desertion.

apprentice, i. 290.  
 fraudulent, v. 26.  
 discharge and transfer to reserve, v. 26.  
 foreign, vi. 34.  
 servant, vi. 216.

## ENMITY—

of juror, v. 27; ii. 379.  
 of witness, v. 26; xiii. 213.

ENROLMENT. *See* Rolls.

for incidental motions, i. 79.  
 notice of, i. 79.

ENTAILS, v. 27.

origin and development, v. 27.  
 title to make, v. 32.  
 subjects suitable, v. 32.  
 destination, v. 33; ii. 144; vi. 65–68, 164.

Statute, 1685 c. 22, v. 34.

essential clauses, v. 34, 38.

prohibitory clauses, v. 35, 36.

irritant and resolutive clauses, v. 37; x. 322; xii. 65–68.

reserved powers, v. 38.

express conditions, v. 39.

completion of deed, v. 39, 40; vii. 48.

persons affected by the fetters, v. 40.

liability of estate for entailer's debts and their extinction by the heir, v. 41, 45.

liabilities of heir of, iii. 200; vi. 171, 172.

statutory powers, v. 44.

to disentail, v. 42; xi. 206; xii. 58; xiv. 29.

to sell, v. 44; xi. 9.

ENTAILS—*continued.*

statutory powers—*continued.*

for redemption of land tax, v. 44.  
 in payment of debts affecting fee, v. 45.  
 to public bodies, v. 45.  
 with consent, v. 46.  
 without consent, v. 46.  
 to exambi, v. 56, 116, 118–131; viii. 342; xii. 31.

to grant feus and leases, v. 46, 55, 56; vi. 140; vii. 364; xii. 128.

to charge improvement expenditure, v. 47, 57, 257, 258; iv. 356; vii. 378; ix. 272.

to charge estate with estate duty, xiv. 29.

to grant family provision, v. 49; i. 232; vii. 332, 333, 350–352, 364; xi. 343; xii. 74, 243, 359; xiv. 29.

armorial bearings, i. 307.

consolidation, iii. 227.

entailed money, i. 283; xii. 31, 380.

estate duty, v. 102.

factor *loco absentis*, vii. 205.

franchise, vi. 48.

mansion-house. *See* Mansion-house.

minors, pupils, or incapax as heir in possession, iv. 33, 34; vii. 192.

*See* Tutors Nominate.

paying off provisions, xii. 129.

power to cut timber, xii. 260.

power to work minerals, xii. 338.

redemption of casualties, xii. 178.

searches in register of, xi. 122.

securities under, vi. 188.

procedure in, v. 51.

grant of entail under trust deed, xii. 68, 360.

possession on double title, iv. 353.

service of heir and entry, xii. 174. *See* Service.

applications to Sheriff Court, v. 55.

applications to grant feus and dispositions, v. 55.

applications under Acts 1840 and 1882, v. 56.

applications to grant leases, v. 56.

applications to borrow and charge estate, v. 57.

ENTERING APPEARANCE IN ACTION, i. 75.

- ENTERTAINMENTS—**  
nuisance, v. 43.
- ENTRY WITH SUPERIORS**, v. 57. *See Superiority.*
- EPISCOPAL CHURCH IN SCOTLAND**, iii. 58.  
history of different classes, v. 58.  
legislation, v. 59.  
bishops and sees, v. 61.  
canons, v. 62.  
Civil Courts jurisdiction, v. 63, 64.  
interpretation of the canons, v. 65.  
representative Church Council, v. 66.
- EQUALISING DIVIDEND**. *See Dividend.*
- EQUITABLE COMPENSATION**, iv. 390, 391.
- EQUITY**, v. 67.  
different meanings as a legal term, v. 67.  
*Roman*, v. 67.  
introduced by the *praetor*, v. 71.  
introduced by the emperors, v. 73.
- English law—**  
history, v. 74.  
extent of Chancery jurisdiction, v. 77.  
maxims of English Courts, v. 78.
- law of Scotland**, v. 79.  
Stair and Erskine's doctrine, v. 80.  
why no separate Court, v. 81.  
Kames' "Principles of," v. 82.  
present position, v. 82.  
jurisdiction under *nobile officium*, v. 83.  
jurisdiction of Sheriff Court, v. 84.  
in sense of discretion, v. 85.  
authorities, v. 86.
- ERASURES**, v. 86.  
in affidavit, i. 155; v. 89.  
in deeds generally, v. 86.  
in wills, xii. 90, 91.  
in holograph writings, vi. 222.  
in instruments of sasine, iv. 137; v. 88.  
*in mortis causa* deeds, v. 87. *See Wills, records*, v. 88, 89.  
of signature, iv. 135; xii. 90.
- ERCTION, LORDS OF**, v. 89.
- ERCTION OF PARISHES**, iv. 249.
- ERRATA**, xiii. appendix.
- ERROR**, v. 89. *See Clerical Error; Fraud.*  
ground of reduction, v. 89, 155.  
subject-matter of agreement, v. 90.  
person undertaking, v. 90.
- ERROR—continued.**  
ground of reduction—*continued*.  
price or consideration, v. 91.  
quality of thing, v. 91.  
nature of contract, v. 91.  
essential, v. 92; ii. 28; ix. 143.  
mutual, v. 92.  
essential error induced, v. 94.  
in description, will, xii. 113, 117.  
in extract, v. 195.  
in interlocutor, i. 2; vii. 40.  
in bank pass-books, i. 380.  
payment in, v. 94; iii. 171; x. 303.  
wife consent through, iii. 214.
- ESCAPE OF A PRISONER**, v. 96.
- ESCHEAT**, v. 96. *See Outlawry; Fugitation; Forfeiture; Confiseation.*
- ESQUIRE**, i. 305.
- ESSENTIAL ERROR**. *See Error.*
- ESTATE DUTY—**  
under 52 Vict. c. 7, v. 97.  
under Finance Act, 1894, v. 99. *See Account Duty; Inventory Duty; Legaey and Succession Duty.*  
property included, v. 99.  
property excluded, v. 100; i. 236; xii. 295.  
passing on the death, v. 102.  
competent to dispose, v. 102.  
entailed estates, v. 102.  
settled property, v. 102.  
settlement duty, v. 102.  
value of property, v. 103; i. 285.  
property situated abroad, v. 104.  
persons accountable, v. 105; xi. 123.  
aggregation, v. 105.  
graduated rates, v. 106.  
when payable, v. 106.  
appeal from commissioners, v. 106.  
commissioners' certificate of payment, xi. 123.
- ESTATES OF THE REALM**, v. 107.
- ETCHINGS—**  
copyright, iii. 306.
- EVICTION—**  
warrant against, xi. 11; xiii. 153–158.  
of eftoter, iii. 394.
- EVIDENCE**, v. 107; viii. 369; xiv. 30.  
*See Proof; Interrogations; Witness; Oath; Parole Evidence.*  
instruments, etc., of, v. 107; xi. 400.  
Act of Parliament, iii. 290; x. 46.

EVIDENCE—*continued.*

instrument's, etc., of—*continued.*  
 affidavits, i. 156.  
 banker's books, i. 390.  
 copies and extracts, ii. 60; iii. 288; v. 195, 198.  
 decrees, iv. 127.  
 gazettes, vi. 118.  
 history books, etc., ii. 191.  
 log book, viii. 154.  
 maps and plans, viii. 212.  
 mercantile books, ii. 191.  
 notarial copies, iii. 290.  
 official books, ii. 190.  
*corporis inspectio*, v. 108.  
 primary rules, v. 108.  
 relevancy of, v. 108.  
 relevancy of collateral facts, v. 109.  
 relevancy of motive, v. 110.  
 relevancy of explanatory or introductory facts, v. 110.  
 acts of conspirators, v. 110.  
 facts similar, v. 111.  
 relevancy of malice intention, knowledge, v. 110.  
 scheme or system of conduct, v. 112.  
 course of business, v. 112; iv. 58.  
 secondary rules, v. 113.  
 best, ii. 59; v. 113.  
 direct, indirect, and circumstantial, v. 113.  
 rejected on grounds of public policy, v. 115.  
 confidential communications, iii. 183–186.  
 declaration by prisoner, iv. 119.  
 deposition, iv. 204.  
 foreign courts, iii. 288, 289; ix. 98.  
 hearsay, ii. 62.  
 judicial notice, vii. 215.  
 notes of, vii. 239.  
*onus probandi*, x. 2–8; i. 160.  
 opinion, ix. 145, 146, 96; ii. 144.  
 presumptive, x. 2.  
 Queen's, x. 128.  
 taken on commission, iii. 111.  
 variance between proof and averment, v. 112.  
 writ or oath. *See* Oath; Witness.

## EXAMINATION—

intrants, Faculty of Advocates, i. 143.  
 intrants, Writers to the Signet, xiii. 228.  
 judicial, v. 116. *See* Admissions.

EXAMINATION—*continued.*

of bankrupt in sequestration, xi. 196.  
 of bankrupt in *cessio bonorum*, ii. 363.  
 of havers, xi. 385.  
 of law agents, vii. 309–313; xiii. 289.  
 of witness, iv. 3; xiii. 214.  
 on commission, iii. 3.  
 on declaration by prisoner, iv. 117; i. 286; xiii. 160, 161.  
 post-mortem, i. 222.  
**EXCAMBION**, v. 116; xi. 11.  
 fee-simple properties, v. 117.  
 entailed estates, v. 118.  
 extent, situation, and value, v. 119.  
 conditions, v. 121.  
 procedure in petitions, v. 125.  
 completion of contracts, v. 126.  
 special points raised, v. 127.  
 reference to form of contract, v. 127.  
 form of contract, v. 128.  
 glebes, iv. 367.  
 by judicial factor, vii. 189.  
 by trustees, xii. 364, 368.  
 by tutors nominate, xiii. 19, 20.  
**EX CAPITE LECTI**, iv. 98; xii. 53.  
**EXCEPTION**—  
 to deed founded on, in Sheriff Court, v. 133.  
 personal, ii. 27.  
**EXCEPTIONS**. *See* Bill of Exceptions.  
**EXCERPTS**, iii. 288. *See* Evidence.  
**EXCHEQUER**—  
 barons of, ii. 33.  
 bills, ix. 13.  
 procurator-fiscal's reports to, x. 61, 62.  
 unclaimed consignations, i. 41.  
 Court of, v. 134. *See* Extent.  
 history, v. 134.  
 judicial functions, v. 134.  
 ministerial functions—  
 Crown charters, v. 135.  
 appointments of tutors dative, v. 135.  
 procedure and diligence, v. 134.  
 Act, 1856, v. 135.  
 appeals under the Stamp Act, v. 135.  
 extracts, v. 195.  
 reclaiming note, x. 224.  
**EXCISE**, v. 136; xiv. 49.  
 brewing, ii. 218.  
 management, v. 136.  
**EXCLUSIVE PRIVILEGE**, v. 136. *See* Copyright; Designs; Patents; Trade Marks.

- EXCLUSIVE TITLE**, xii. 266.
- EXCOMMUNICATION**, v. 137.
- EXCULPATION, LETTERS OF**, v. 137.
- EX DELIBERATIONE DOMINORUM CONCILII**, v. 115.
- EXECUTION**. *See* Diligence, etc.; Citation; Decree.
- interim, pending appeal to House of Lords, vii. 39.
- of capital sentence, ii. 292.
- EXECUTION OF DEEDS**. *See* Deeds, Execution of.
- EXECUTION BY MESSENGER OR OTHER OFFICER**, v. 137.
- summons, v. 138.
- citation of witnesses, v. 138; xiii. 205.
- postal citation, v. 139.
- diligence—
- charge, ii. 390, 391, 392; v. 139.
  - pointing, v. 139; ix. 297.
  - arrestment, i. 311-316; v. 139.
  - ejection, iv. 385.
  - inhibition, v. 140; vi. 352.
  - interruption of prescription, v. 140.
  - interdiction, v. 140.
  - small debt proceedings, v. 140; ix. 293.
- EXECUTOR-CREDITOR**, i. 316, 322; v. 148.
- EXECUTOR DATIVE AND NOMINATE**, v. 140; xii. 131-134; xiv. 30. *See* Confirmation; Heir and Executor; Inventory; Testament.
- persons entitled to office, xii. 131.
- pupil as, x. 119.
- minors as, xii. 348.
- powers of, xiv. 30.
- nominate—
- arrestments, i. 322.
  - heritage, xii. 69.
  - nomination, xii. 88.
  - powers of, xiv. 30.
  - trustees as, xii. 350.
  - vicious intromission, xiii. 126.
  - who may be confirmed, xiv. 30.
- ad omissa vel male appretiata*, i. 133.
- ambassador as, i. 213.
- bankrupt, xi. 251.
- completing title to real burdens, ii. 244, 245.
- damages, breach of promise, ii. 213.
- defined, v. 140; xii. 116, 126, 130, 131.
- death or incapacity of, xiv. 31.
- EXECUTOR DATIVE AND NOMINATE**—*continued*.
- foreign, i. 322.
- heritable securities, vi. 192.
- in England, i. 322.
- jurisdiction, vii. 227.
- legacy to, xii. 122.
- legal rights of, xii. 43.
- legitim, xiii. 68.
- liabilities of, xii. 131-133.
- liability for calls on shares, vii. 162, 163.
- notarial instrument, ix. 32.
- oath in bankruptcy, ix. 59.
- oath to inventory, ix. 60.
- of deceased partner, ix. 150.
- payment of debts, xii. 119, 132.
- relief, xii. 129, 130.
- reparation, x. 286.
- title to sue or be sued, v. 147; iv. 160; xii. 271, 272.
- to foreigner, xii. 131.
- triennial prescription, xii. 316.
- violent profits, xiii. 125.
- “**EXECUTORS**,” v. 150.
- EXECUTORS (SCOTLAND) ACT**, 1900, xiv. 30.
- EXECUTORY TRUST**, xii. 327; xiii. 87.
- EXECUTRY**. *See* Executor.
- aliment of widow till first term—trust, i. 202.
  - bank account, i. 381.
  - banker's lien over funds, i. 395.
- EXEMPTIONS**—
- from ecclesiastical assessments, xiv. 28.
  - from income tax, vi. 267, 286, 298.
  - from inventory duty, vii. 59.
  - from inhabited house duty, vi. 347.
  - from legacy and succession duty, viii. 6, 18.
  - licence to kill game, viii. 49.
  - Stamp Acts, xi. 392-401, 465.
- EXHIBITION, ACTION OF**, v. 150; xi. 314.
- exhibition *ad deliberandum*, v. 151.
  - exhibition *ad probandum*, v. 152.
  - exhibition and delivery, v. 151.
- EXHUMATION**, ii. 265; xiii. 123.
- EXONERATION**—
- in multiple poinding, viii. 380.
  - corrupt and illegal practices, iii. 337-340.

EXONERATION AND DISCHARGE, v.  
    152.  
    by beneficiaries, v. 152.  
    by Court, v. 154.  
    by co-trustees, v. 153.  
    by nominee of trustee, v. 153.  
    judicial factor, vii. 194.  
        effect of, v. 155.  
EXPEDE, v. 155.  
EXPENSES, v. 156; xiv. 32.  
    administering trust, xii. 355, 382.  
    agricultural references, i. 183.  
    allotments, i. 210.  
    appeal to Court of Session on question  
        of, xiv. 6.  
    incurred by parish council, ix. 121.  
    arbitration, i. 298.  
    Board of Trade investigation, i. 35.  
    Crofters' Commission, iii. 400.  
    deathbed, iv. 101.  
    election, iii. 333, 334, 340-342; ix. 124.  
    election petition (municipal, etc.), v. 18.  
    election petition (parliamentary), v. 6,  
        11.  
    funeral, vi. 98.  
    heritable creditor, ii. 177.  
    of common agent, iii. 125.  
    of confirmation, iii. 198; xii. 355.  
    of extract, v. 194.  
    of inhibition, vi. 322.  
    private bills, x. 43, 45.  
Private Legislation Procedure (Scotland)  
    Act, 1899, xiv. 69, 70.  
protesting bill, ii. 105.  
remit, etc., v. 178; x. 277.  
waifs and strays, xiii. 144. *See Taxa-*  
    tion.  
course of action, v. 156.  
    abandonment, i. 1; v. 160.  
Bill Chamber, ii. 72.  
conclusion, iv. 126; v. 159.  
caution for, ii. 353; iii. 217; xiv. 32.  
copies of documents, v. 178.  
decree by default, iv. 153.  
fees to counsel, i. 175.  
follow success, v. 156; xii. 224.  
*mala fides*, viii. 189.  
modification, v. 157; xii. 224; xiv. 32.  
of taxation, xii. 225.  
omitted in decree, i. 15.  
omitted in petition, i. 15.  
Outer House, v. 159.

EXPENSES—*continued.*  
course of action—*continued.*  
    amendment of record, i. 216-220;  
        x. 77; xii. 149.  
    reclaiming notes and appeal, i. 261,  
        277; v. 159; x. 227; xii. 299.  
    reponing, v. 160; x. 307, 308.  
    reservation, v. 158.  
    sale of fees, x. 64.  
    when payment a condition, v. 161.  
different parties, v. 165.  
administrator-in-law, xiii. 16.  
Crown, v. 165; vi. 9.  
*curator ad litem*, i. 353.  
*dominus litis*, v. 165; iv. 330.  
husband and wife, v. 165.  
joint litigants and several defendants,  
    iii. 287; v. 166.  
judicial factor, v. 168; vii. 196.  
law agent's account, v. 170; vii. 316,  
    317.  
liability of, i. 169.  
minor, iv. 42.  
pauper litigants, ix. 349, 350, 351;  
    x. 307; xiii. 119.  
public officials, v. 169.  
trustees, v. 167; vii. 390; xii. 389-394.  
    tutors and curators, etc., v. 168;  
        xiii. 14, 16.  
jury trial, v. 161.  
    generally, v. 161.  
    new trials, v. 162.  
Justiciary Court, i. 254, 266; v. 174.  
    appeal for bail, i. 374.  
Lands Valuation Appeal Court, vii. 301.  
lawburrows, vii. 328.  
House of Lords, i. 270, 272; v. 175.  
    interim execution pending appeal,  
        i. 175; vii. 39.  
miscellaneous actions—  
    collision between ships, iii. 99.  
    consistorial actions, i. 311; iii. 78;  
        v. 163-165; xii. 223.  
    constitution, iii. 239; v. 162; xiii. 14.  
    diligence, i. 318, 319, 320; v. 165;  
        vi. 103.  
    interdict trespass, xii. 311.  
    multiplepoundings, v. 163; viii. 384;  
        xii. 390, 391.  
    infringement of patent, ix. 221, 223.  
petitions for special power, xii. 355.  
proving of the tenor, v. 162.

- EXPENSES—continued.**
- miscellaneous actions—*continued*.
  - reduction, v. 162 ; xii. 266.
  - slander, i. 243.
  - special cases, v. 163.
  - suspension, xii. 213, 214, 215, 216, 217.
- Registration Court**, i. 174.
- bankruptcy proceedings**, v. 171 ; xi. 173, 255.
- cessio*, ii. 366, 369 ; v. 172.
  - liability of bankrupt, v. 172.
  - liability of trustee, v. 171.
  - necessary, v. 171.
- Sheriff Court**, i. 174.
- appeal to Sheriff, i. 278.
- Debts Recovery Court**, iv. 115.
- Small Debt Court**, xi. 355.
- Teind Court**, iii. 61 ; v. 173.
- tender**, effect of, v. 158 ; xii. 239.
- under statutes**, i. 172.
- Contagious Diseases (Animals), iii. 248.
  - enforcing vaccination, xiii. 56.
  - Entails Acts, v. 55, 173.
  - Lands Clauses Act, 1845, v. 172 ; vii. 282, 299.
  - Licensing Acts, viii. 69.
  - Merchandise Marks Acts, viii. 327.
  - Merchant Shipping Acts, v. 173.
  - Public Health Act, x. 110.
  - Rivers Pollution Prevention Act, x. 365.
  - summary convictions, iii. 285.
  - witnesses, v. 177.
- EXPERT WITNESSES**, v. 177 ; ix. 96.
- EXPIRY OF THE LEGAL**, i. 107.
- EXPLOSION—**
- fire insurance, v. 344.
  - reported to procurator-fiscal, x. 61.
- EXPLOSIVE SUBSTANCE**, v. 178 ; iii. 74 ; x. 202.
- application for licence, v. 178, 179.
  - administration of law, v. 180.
  - definitions, v. 180, 181.
  - exemptions, v. 180, 181.
  - Explosives Act, 1875, v. 178.
  - legal proceedings, v. 180.
  - regulations, etc., v. 179.
- EXPOSER—**
- articles of roup, i. 325.
  - auction, i. 349–352.
  - bidding, i. 350, 351.
- EXPOSING CHILDREN**, v. 180.
- EXPROMISSOR**, v. 182.
- EXTENT, OLD AND NEW**, v. 182.
- EXTENT, WRIT OF**, v. 184.
- extent in chief—
  - first degree, v. 184.
  - second, third, and fourth degrees, v. 185.
  - extent in aid, v. 185.
  - writ of *diem clausit extremum*, v. 186.
- EXTINCTION**. *See* Discharge.
- of cautionary obligations, ii. 347.
  - of contracts, iii. 267.
  - of obligations, ix. 83.
  - of real money burdens, ii. 246.
  - of servitudes, xi. 281 ; xiv. 77.
- EXTORTION**, v. 187.
- EXTRACT (EXTRACT DECREE)**, etc., v. 189 ; xiii. 145. *See* Copies and Extracts.
- EXTRACT (EXTRACT OF DEEDS)**, etc., iii. 288 ; v. 198 ; x. 248.
- leases, xii. 235.
  - protest, xii. 142.
  - Register of Sasines, x. 255.
  - births, deaths, and marriages, x. 261.
  - Stamp Acts, xi. 440.
- EXTRACT DECREE—**
- as evidence, v. 195.
  - borrowing productions before ordering, ii. 196.
  - definition of, and statutory provisions, v. 189.
  - errors in, iii. 52 ; v. 195.
  - expenses of, v. 194.
  - extracted and unextracted processes, v. 194.
  - form of, v. 190.
  - general service, xii. 54.
  - in Bill Chamber, v. 196 ; xii. 215, 216.
  - in Church Courts, v. 198.
  - in Court of Exchequer, v. 195.
  - in Court of Justiciary, v. 196.
  - in Sheriff Court, v. 196.
  - in Debts' Recovery Court, iv. 115.
  - in Small Debt Court, xi. 356.
  - in Teind Court, iii. 61 ; v. 196.
  - interim, v. 193.
  - of protestation, v. 195 ; x. 78.
  - of verdicts, v. 195.
  - power to supersede, v. 194.
  - recall of decree in absence, i. 14, 15.
  - reponing note against unimplemented, i. 17.

**EXTRACT DECREE—continued.**

review where appeal incompetent, i. 264.  
rules and practice in extractor's office,  
v. 191.  
special service, xii. 55.  
the word "decern" necessary, v. 191.  
when issued, v. 192.  
when unnecessary, v. 195.  
**EXTRACTOR**, v. 198; ii. 197. *See Extract*,  
v. 189.  
*ad vitam aut culpam*, i. 141.  
assistant, v. 199.  
office of, v. 191.  
of Court of Teinds, v. 199.

**EXTRADITION**, v. 200; xiii. 161.  
statutes, v. 200.  
crimes, v. 201.  
persons, v. 202.  
political crimes, v. 202.  
procedure, v. 202.

**EXTRAJUDICIAL EXPENSES**, i. 355.

**EXTRINSIC**, ix. 72.

**FACILITY**, iii. 22.

**FACT, FINDINGS IN**, v. 329.

**FACTOR**, v. 204. *See Agency; Broker; Factory and Commission; Principal and Agent; Factors Act; Lien; Power of Attorney.*

and bank agent, i. 388.  
house, cannot be county assessor, i.  
331.  
discharge of, v. 211.  
discharge of *interim*, xi. 182.  
oath in bankruptcy by, ix. 59.  
recovery of factorial claims by, xii. 223.  
remuneration of, xii. 361, 362.  
trustee acting as, xii. 353.  
tutors nominate acting as, xiii. 14.

**FACTOR LOCO ABSENTIS**. *See Judicial Factor.*

**FACTOR LOCO TUTORIS**. *See Judicial Factor.*

**FACTORIES, REGISTER OF**, i. 41.

**FACTORS ACTS**, v. 204. *See Bill of Lading; Consignment; Document of Title; Pledge; Sale.*  
Factors Act, 1889, v. 205.  
meaning of mercantile agent, v. 205.  
disposition by mercantile agent, v. 206,  
207.  
consent of owner, v. 206.

**FACTORS ACTS—continued.**

not applicable to exceptional contracts,  
v. 207.  
pledge of documents of title, v. 207.  
dispositions by buyers or sellers, v.  
207.  
contracts of hire purchase, v. 208.  
effect of transfer of document of title, v.  
209.  
vendor's lien in a question with endorsee,  
v. 209.

**FACTORY AND COMMISSION**, v. 210.

termination, v. 211.  
recal, vii. 193, 199, 204, 206, 215.  
when special powers necessary, v. 211.  
*See Principal and Agent; Agency; Factor.*

**FACTORY AND WORKSHOPS ACTS**,

1878-1895, v. 212; viii. 318; xiv. 32.  
definitions, v. 237.  
sanitation and health, v. 212, 241.  
overcrowding, v. 212.  
lime-washing, v. 213.  
temperature, v. 213.

special regulations for particular trades,  
v. 213.

cotton cloth factories, v. 213.  
bakehouse, v. 214.  
laundries, v. 214.  
wet-spinning, v. 214.  
white lead, v. 214.  
lead arsenic and poison used, v. 215.  
exception, v. 215.

dangerous trades, v. 215.  
powers and duties of inspector, v.  
216.

powers and duties of sanitary authority,  
v. 217.

powers of Court of Justice, v. 217.

safety, v. 218; xiv. 32.  
fencing of machinery, v. 218.  
clearing of machinery, v. 219.  
self-acting machines, v. 219.  
provisions against fire, v. 219.  
powers and duties of inspector, v. 219.  
powers and duties of sanitary authority,  
v. 220.

powers of Court of Justice, v. 220.

accidents, v. 220.  
powers of Secretary of State, v. 221.  
powers of inspector, v. 221.  
powers and duties of surgeon, v. 221.

- FACTORY AND WORKSHOPS ACTS—**  
*continued.*  
employment, v. 221.  
textile, print, bleaching, and dyeing works, v. 222.  
non-textile, v. 223, 245, 246.  
flax scutch mills, v. 224.  
laundries, v. 225.  
domestic workshops, v. 225.  
Jews, v. 225.  
special regulations regarding meals, v. 225, 241, 242.  
holidays, v. 225.  
overtime, v. 226, 243, 244; xiv. 33.  
night work, v. 227, 244.  
certificate of fitness, v. 228.  
powers of inspector, v. 229.  
duties of surgeon, v. 229.  
education. *See Education.*  
notices, lists, registers, v. 229, 245.  
exception, v. 231.  
administration, v. 232.  
inspectors, v. 232.  
certifying surgeon, v. 232.  
legal proceedings, v. 232.  
orders by the Secretary of State, v. 240.  
fines and penalties, v. 233.
- FACTORY AND WORKSHOPS ACT, 1901, xiv. 32.**
- FACTUM PRESTANDUM, AD—**  
decree, iv. 126.  
imprisonment on decree, iv. 126.  
obligation, ix. 78.  
suspension, xiv. 80.
- FACULTIES.** *See Powers and Duties.*
- FACULTY OF ADVOCATES, i. 141.**
- FAIRS AND MARKETS—**  
regulations, v. 247.  
rights of the public, v. 248. *See En-grosser; Forestalling; Regrating.*
- FALCIDIA PORTIO, v. 248.**
- FALLOW, iv. 2.**
- FALSA DEMONSTRATIO NON NOCET, v. 249.**
- FALSE ACCUSATIONS—**  
against judges, i. 50.  
against persons, i. 50.  
punishment, i. 50.
- FALSE CLAIMS IN BANKRUPTCY, v. 249.** *See Bankruptcy.*
- FALSE CONTRACTS, xii. 19.**
- FALSE SWEARING, ix. 255.**
- FALSE WEIGHTS, FALSE MEASURES, xiii. 186.**
- FALSEHOOD, FRAUD, AND WILFUL IMPOSITION, v. 250; iii. 375.**  
by writ, v. 250.  
of arbiter, i. 303.  
registration, v. 250.
- FALSIFYING OF BOOKS, v. 251.**
- FAMILY, MEANING OF, xii. 116.**
- FAMILY BIBLES—**  
as evidence, ii. 191.
- FARES—**  
railway, x. 145, 157, 159.  
tramway, xiii. 285.
- FATAL ACCIDENTS INQUIRIES, v. 251.**  
method of inquiry, v. 251.  
extent of Act 1895, v. 252.  
proceedings before inquiry, v. 253.  
proceedings at inquiry, v. 252.  
proceedings after inquiry, v. 253.  
example of verdict, v. 253.
- FATHER.** *See Administrator; Parent and Child; Affiliation; Bastard; Curator; Judicial Factor; Tutor.*
- FATUOUS PERSON, vii. 3.**  
title to sue, xii. 269.
- FAULT.** *See Culpa; Sale; Warranty.*
- FEAL AND DIVOT; FUEL, v. 254.**
- FEAR.** *See Extortion; Force.*
- FEES—**  
conjunct, xii. 70, 71.  
husband and wife, xii. 70, 71.  
parent and child, xii. 71.  
strangers, xii. 70.  
old and new, xii. 48.
- FEE AND LIFERENT.** *See Liferent.*
- FEE FUND, v. 254.**  
*cessio* proceedings, ii. 360.
- FEE-SIMPLE, v. 256.**
- FEES.** *See Expenses; Honorarium.*  
advocates in Aberdeen, i. 151.  
arbiters, v. 178.  
commissioners, v. 178.  
clerk in reference, xii. 315.  
counsel, i. 146; v. 175.  
couns'l's clerks, i. 149; xii. 315.  
directors, vii. 135.  
factors, xii. 315.  
for inspection of registers, xi. 110.  
in bankruptcy, i. 39.

**FEES**—*continued.*

in remits, v. 178.  
 law agents, xii. 120, 315.  
 macers, i. 313.  
 medical practitioners, x. 5; xiii. 248, 249, 250.  
 medical referees, xiii. 224.  
 payable by intrants, W.S. Society, xiii. 228.  
 intrants, Faculty of Advocates, i. 144.  
 stockbrokers, xii. 315.  
 surgeons, xii. 315.  
 surveyors, xii. 204.  
 witnesses, v. 177; xii. 315.

**FELLOW-WORKMAN AND FELLOW SERVANT**, v. 256.**FELONY**, v. 256.

treason, xii. 307.  
 arson, i. 324.  
 destruction of ammunition, i. 221.

**FEMALES**. *See* Women.**FENCES**, v. 257.

duty to fence dangers on land, x. 288-290.  
 barbed wire, v. 259; x. 289.  
 breaking, ii. 216.  
 march, viii. 212.  
 questions between landlord and tenant, v. 257.  
 questions between seller and purchaser, v. 258.  
 questions between superior and vassal, v. 259.  
 questions of succession, v. 259.  
 railway companies' duties, v. 259.  
 sufficiency of, x. 290.  
 tramway promoters' duties, xiii. 283.

**FENCING MACHINERY**. *See* Factory and Workshop Act.**FENCING THE COURT**, v. 259.**FERIÆ**, v. 260.**FERRY**, v. 260.

title, v. 260.  
 extent of right, v. 260.

parts and pertinents, ix. 183.

**FERTILISERS AND FEEDING STUFFS ACT**, v. 262.**FEU**. *See* Feu-Charter; Feudal System.

power to—

heir of entail, v. 46.  
 heritable creditor, ii. 180.  
 judicial factor, vii. 189.

**FEU**—*continued.*

power to—*continued.*

magistrates, iii. 130.  
 trustees, xii. 364, 367.  
 tutors, xiii. 19, 20.  
 tinsel of, v. 294; xii. 266.

**FEU-CHARTER**, v. 263.

charter and infestment prior to Act 1845, v. 263.

proper and improper investiture, v. 265.

charter, v. 264.

infestment, v. 267.

registration of instrument of sasine, v. 273.

charter and infestment after Act 1845, v. 275.

charter and infestment after Act 1847 to 1858, v. 277.

charter and infestment after Act 1858 to 1868, v. 278.

present form, v. 281.

narrative clause, v. 282.

dispositive clause, v. 282.

description of lands, v. 285-290.

real burdens, v. 297-304.

reservation of mines and minerals, v. 291-293; viii. 340.

building restrictions, ii. 233; v. 295, 296.

subinfendation, xii. 23.

reservations and conditions, v. 291-293; vii. 179, 182.

restrictions, v. 295-297.

irritant and resolutive clauses, v. 294; vii. 74; xii. 178, 179.

term of entry, v. 305.

tenendas, v. 306.

reddendo, v. 306; x. 230.

assignation of writs, v. 308.

assignation to rent, v. 310.

clause of obligation, relief of public burdens, v. 311.

clause of warrandice, v. 313.

clause of registration, v. 314, 315.

testing clause, v. 315.

*sasine propriis manibus*, xi. 87.

**FEU CONTRACT**, v. 320; xii. 163, 164, 165; xiv. 79.

diligence under, xii. 163.

**FEU DISPOSITION**, v. 320.

**FEU FARM**, xii. 160, 182.

- FEUDAL REGISTERS.** *See* Property Registers.
- FEUDAL SYSTEM**, v. 320. *See* Tenures; Superiority.
- FEU-DUTY.** *See* Feu-Charter.
- allocation of, xii. 162, 167.
- arrears of, v. 294; xii. 165, 167.
- assignation of, xii. 167.
- burgage subjects, ii. 250; xi. 143.
- change of ownership, xii. 163, 164.
- courtesy attaches, xii. 50.
- creditor collecting, xii. 183.
- debitum fundi*, iv. 106; v. 295.
- discharge of, ix. 37; xii. 183.
- heir and executor, vi. 176; xii. 164, 165.
- heirs portioners' right to, xii. 49.
- income tax on, vi. 275.
- Lands Clauses Acts, vii. 296.
- liability of sub-vassals, xii. 166, 167.
- payment, ix. 236; xii. 161, 167.
- prescription, xii. 167.
- retention of, xii. 167, 183.
- Sheriff Court, xi. 310.
- superior's remedies for compelling payment, xii. 161, 166.
- terce no burden on, xii. 49.
- FIAR**, v. 324. *See* Liferenter and Fee; Liferenter; Conjunct Rights.
- FIARS PRICES**, v. 324.
- FIAT UT PETITUR**, xii. 218.
- FICTIO JURIS**, v. 325.
- FILIATION.** *See* Affiliation.
- FINAL DECREE**, iv. 124.
- where charge incompetent, i. 15.
- FINAL JUDGMENT**, v. 328.
- motions after, v. 328. *See* Appeal; Decree; Reclaiming Note.
- FINANCE ACTS**, 1894 and 1896, v. 99, 329.
- appeal—
- Court of Session, v. 329.
  - Sheriff Court, v. 329.
- FINANCE COMMITTEE.** *See* County Council.
- FINDINGS IN FACT AND IN LAW**, v. 329.
- FINE**, v. 329. *See* Arbitrary Punishment; Punishment.
- breach of interdict, ii. 209.
- imprisonment in default of payment, xiv. 39.
- instalment payments, v. 330.
- laid down by statute, v. 330.
- FINE**—*continued.*
- under Summary Jurisdiction Acts, iii. 284; v. 330.
- FINE ARTS**—
- copyright in, iii. 306.
- FIRE**—
- caused by railway, x. 142.
  - effect on sale of heritage, xi. 9.
  - Factory and Workshops Acts' provisions against, v. 219, 220.
  - loss caused by—
    - carriers' liability, ii. 301. *See* Fire Insurance.
    - innkeepers' liability, vi. 361; viii. 400.
    - shipowners' liability, xiii. 242.
- FIREARMS**—
- reckless or culpable use of, v. 331.
  - assault with, i. 328.
  - attempt to murder, i. 346.
  - Pistols Act, 1903, xiv. 60.
  - pointing, i. 329.
- FIRE INSURANCE**, v. 332. *See* Marine Insurance.
- general principles, v. 332.
  - indemnity, v. 332.
  - insurable interest, i. 339; v. 332.
  - assignability, v. 333.
  - subrogation, v. 334; xii. 34.
  - contribution, v. 334.
  - constitution of contract—
    - proposal and acceptance, v. 336.
    - covering notes, v. 337.
    - policy, v. 338.  - representations and warranties, v. 339.
  - materiality, v. 339.
  - warranties, v. 340.
  - extent of duty of disclosure, v. 340.
  - description of subject, v. 341.
  - alterations, v. 341.
  - risks excepted, v. 342.
  - lightning, v. 343.
  - overheating, v. 343.
  - explosions of gunpowder or inflammable gas, v. 344.
  - incendiaryism, v. 344.
  - riot or civil commotion, v. 345.
  - military or usurped power, v. 345.
  - adjustment of loss, v. 346.
  - notice, v. 346.
  - waiver, v. 347.
  - reinstatement and measurement, v. 347.
  - arbitration, v. 348

- FIRE-RAISING, v. 348.  
 to defraud insurers, v. 349.  
 wicked, culpable, and reckless, v. 349.  
 minor offences and attempts, v. 349.  
 procedure, v. 350; x. 61.
- FIRM, MEANING OF, ix. 155.
- FIRM NAME, vi. 1; ix. 155. *See* Partnership.
- FIRST OFFENDERS, i. 133; vi. 2.
- FISHINGS, vi. 3.  
 Fishery Board, vi. 9; xii. 301-305.  
 district boards, vi. 18; x. 209.  
 eel, vi. 23.  
 salmon, i. 226; vi. 11; ix. 183; x. 352;  
     xiii. 239, 240.  
 close time, iii. 13; vi. 15; xii. 262. *See*  
     Close Time.  
 eruives, iv. 19; vi. 13.  
 dam dykes, vi. 14.  
 explosives, xiv. 35.  
 illegal fishing in Tay, xiv. 35.  
 leases of, vii. 347.  
 parts and pertinents, ix. 183.  
 poaching, vi. 20, 22.  
 pollution of rivers, vi. 14; x. 352;  
     xiv. 74.  
 prescription, ix. 307.  
 night poaching, vi. 22.  
 roe, xiv. 36.  
 statutory regulations, vi. 13.  
 stell nets, vi. 14.  
 trout, vi. 22; xiv. 35.  
     poaching, vi. 23.  
 sea fisheries, vi. 3; x. 351; xi. 99;  
     xiv. 34.  
     herring-fishing, vi. 6; xii. 245.  
     lobsters and crabs, vi. 9.  
     oysters and mussels, vi. 7; ix. 183; xii.  
         245; xiv. 34.  
     trawling, vi. 4; xii. 301-305; xiv. 34.  
     whales, vi. 7.
- FIXTURES, vi. 24.  
 what constitutes, vi. 24.  
 articles fixed to soil, vi. 26.  
 articles attached to dwelling-house, vi.  
     26.  
 machinery, vi. 26; xiv. 36.  
 constructive fixture, vi. 27.  
 building an accessory to moveable subject,  
     vi. 27.  
 right of removal, vi. 27.  
     by contract, vi. 27.
- FIXTURES—*continued.*  
 landlord and tenant, vi. 28; i. 180, 184;  
     ix. 184.  
 fiar and representatives of liferenter, vi.  
     29.  
 heir and executor, vi. 29.  
 seller and purchaser, vi. 29; ix. 184.  
 right of heritable creditor, vi. 29.  
 superior and vassal, vi. 30.  
 diligence to attach, vi. 30.  
 valuation, vi. 30.  
 security over trade, xi. 146.
- FLAG, LAW OF THE, vi. 31.  
     of truce, xiii. 150.
- FLAGS, vi. 31.  
     British, xiii. 241, 243.
- FLATS, TENEMENT, iii. 132, 133. *See*  
     Common Interest; Gables.  
 parts and pertinents, ix. 186.
- FLAX SCUTCH MILLS, v. 224.
- FLOGGING, ix. 246; xiii. 189. *See*  
     Whipping.
- FLOODS, i. 211; iv. 85.  
     in mines, viii. 350.
- FLOTSAM, vi. 32. *See* Wreck.
- FLUMEN, vi. 32. *See* River.
- FODDER AND STRAW, xii. 32.
- FOOD—  
     unsound, x. 97.
- FOOD AND DRUGS ACT. *See* Sale of  
     Food and Drugs Act.  
 conviction for adulteration of, xi. 58-64.
- FORBIDDEN DEGREES, vi. 260.
- FORCE AND FEAR, iii. 163. *See* Ex-  
     tortion.  
 at elections, iii. 329.  
 execution of will, xiii. 192.  
 rape, x. 175.
- FOREHAND RENT, x. 281.
- FOREIGN, vi. 33. *See* Abroad.  
 bills, ii. 77, 102, 115; vi. 34.  
 cattle, etc., iii. 248.  
 companies, vii. 102.  
 criminals, i. 288; xiii. 159, 161.  
 deeds, iv. 143.  
 defenders, vi. 43.  
 divorce, iv. 311.  
 enlistment, vi. 34.  
 evidence, ix. 145.  
 executor, i. 322.  
 game, viii. 47.  
 law, vi. 33, 35.

**FOREIGN—continued.**

Foreign Law Ascertainment Act, 1861, vi. 35.

Foreign Marriages Act, 1892, vi. 34, 35.

partnership, ix. 155.

passport, xiii. 275.

seamen, poor relief, ix. 341.

securities, income tax, vi. 295, 296.

ships, xi. 332, 334.

**FOREIGNER, vi. 34.**

as trustee in Scotland, xii. 344, 345.

charging without mandatory, ii. 390.

consul as executor to, xii. 131.

extradition, v. 200.

judicial mandatory, i. 310; xiv. 53.

jurisdiction, vii. 227-231; xi. 316-319.

**FOREMAN OF JURY, ii. 384.****FORESHORE, xi. 100. *See Seashore.***

building on, xi. 101.

parts and pertinents, ix. 183.

prescription, ix. 400.

**FORESTALLING, vi. 35. *See Fairs and Markets.*****FORESTS, vi. 35; x. 235.****FORFEITURE, vi. 36. *See Entail; Irritant and Resolutive Clauses; Superiority; Penal and Liquidate.***

civil, vi. 37.

criminal, iii. 198, 285; vi. 36.

of bail bond, i. 17.

**FORGERY, vi. 38.**

fabrication, vi. 38.

forged writ need not be obligatory, vi. 38.

imitation not essential, vi. 39.

of bill, ii. 89; xii. 142.

of cheque, i. 384, 385; ii. 411.

of initials or mark, vi. 39.

of pawnbroker's certificate, ix. 234.

of trade marks, etc., viii. 325.

of voting papers, xiii. 46.

parliamentary, ix. 138.

post office offences, ix. 372.

where signature genuine, vi. 39.

of signatures of officials, vi. 39.

uttering, vi. 39.

tribunal, vi. 40.

indictment, vi. 40.

proof of, ii. 60; vi. 41.

punishment, vi. 41.

**FORISFAMILIATION, vi. 41; xii. 80.**

*See Legitim.*

**FORMS—**

acceptance of service of appeals, etc., i. 252.

affidavit, i. 155.

affirmation, i. 162.

agricultural lease, vii. 355-363.

appeal in petition for bail, i. 376.

appeal to High Court, i. 264.

application for bail, i. 375.

application for K.C., x. 127.

apprentice's indenture, i. 291.

assignation of bond and assignation, ii. 174.

assignation of legacy, i. 334.

assignation of rents, i. 339.

assignation of writs, i. 340.

attestation, i. 348.

augmentation, i. 356-359.

back letter, ii. 179.

backing of warrant, i. 371.

bail bond, i. 376.

banker's draft, iv. 356.

banns, ii. 23.

bill for letters of arrestment, ii. 67.

bill of advocation, i. 152.

bills of exchange, ii. 77.

having several acceptors, ii. 77.

in a set, ii. 77.

payable by instalment, ii. 77.

bill of sale of ship, ii. 135.

bond, ii. 167.

bond and assignation in security, ii. 172.

bond for cash credit, ii. 183.

bond of caution in suspensions, ii. 349.

bond of corroboration, ii. 184.

caption, complaint, and warrant, ii. 294.

caveat, ii. 354.

certificates for inns and hotels, vi. 363.

certificates of births, deaths, and marriages, x. 267.

certificate of caution, i. 251.

charter of confirmation, iv. 269.

charter of resignation, iv. 271.

cheque, ii. 410.

citation on summary complaint, iii. 38.

clause of direction, v. 304.

commission to take evidence, iii. 115.

commission, Justice of the Peace, vii. 263.

complaint, breach of the peace, ii. 210.

consent to registration, x. 245.

contract of exambion, v. 120.

FORMS—*continued.*

- deed of arrangement, iv. 128.
- deed of assumption (trustees), i. 343.
- deposit receipt, iv. 203.
- discharge for lost deposit receipt, iv. 204.
- discharge of bond, ii. 172.
- discharge of bond and assignation, ii. 174.
- discharge of heritable security, iv. 239.
- disposition, burgage subjects, ii. 253.
- disposition constituting real burdens, ii. 242.
- disposition *omnium bonorum*, ii. 365.
- dispositions prior to 1874, iv. 254.
- docquet adopting as holograph, i. 135.
- execution of citation, iii. 27, 38.
- execution of summons, v. 138, 139.
- extract decree, v. 190.
- feu-charter, v. 281.
- fire policy, v. 338.
- foreign bills, ii. 77, 80.
- indictment, iv. 26; vi. 317.
  - breach of trust, ii. 215.
  - forgery, vi. 40.
  - fraud, vi. 65.
    - for murder, viii. 393.
  - inland bills, ii. 77.
- in sequestration, xi. 172, 257–263.
- infringement of patent, ix. 203–220, 224, 225.
- I.O.U., vii. 66.
- issues, vii. 78–87.
- judgment, Circuit Court, i. 254.
- Judgment Extension Act, vii. 170.
- letters of arrestment, ii. 68.
- letter of guarantee to bank, viii. 36.
- mandate to operate on bank account, iv. 47.
- marine insurance policy, viii. 219.
- minute of appeal, i. 250.
- notarial instruments, v. 316.
- notary's docquet, iv. 139.
- note of appeal, i. 260.
- notice of appeal to High Court, i. 265.
- notice of appearance, i. 280.
- notices of dishonour of bill, ii. 77.
- oath of allegiance, i. 207.
- oath of jurors, ix. 60.
- oath of witnesses, ix. 61.
- petition—
  - appeal Circuit Court, i. 250.

FORMS—*continued.*

- petition—*continued.*
    - appeal Quarter Sessions, i. 274, 276.
    - for *cessio* by creditor, ii. 375.
    - for *cessio* by debtor, ii. 376.
    - meditatio jugæ*, viii. 322.
  - plea of alibi, i. 186.
  - precept of *clare constat*, iii. 48.
  - promissory oaths, ix. 75.
  - protest—
    - cheque, ii. 416.
    - bills of exchange, ii. 78, 79.
  - protestation, x. 77.
  - reclaiming note, x. 210.
  - resignation of trustee, x. 319.
  - summary complaint, iii. 157.
  - summary conviction, iii. 281.
  - summary prosecutions, iii. 390, 391.
  - summons, xii. 144, 147.
  - summons of maills and duties, viii. 183.
  - testing clause, iv. 137.
  - under Heritable Securities Act, viii. 186.
  - verdict, v. 253.
  - warrant of citation, iii. 37.
  - warrant of registration, v. 304, 315; vi. 330, 332, 334, 335, 336, 338.
  - writ of *clare constat*, iii. 47.
- FORTHCOMING. *See* Furthcoming.
- FORTUNE-TELLING, vi. 43; x. 11.
- FORUM COMPETENS. *See* Jurisdiction.
- FORUM NON CONVENIENS, vi. 43.
- See* Jurisdiction.
- FOUR FORMS, LETTERS OF, iv. 229; vi. 46.
- FOXES, vi. 46.
- FRANCHISE, vi. 46; viii. 300.
- parliamentary, vi. 46.
  - owners, vi. 48.
  - tenants, vi. 49.
  - granter of absolute disposition, xii. 333.
  - inhabitant occupier, vi. 49.
  - service, vi. 50; xiv. 36.
  - lodgers, vi. 50; xiv. 36.
  - successive occupancy, vi. 51.
  - disqualifications, vi. 51; xiv. 36.
  - constituencies, vi. 52.
  - table of existing franchises, vi. 52.
- municipal, vi. 53.
- county and parish council, vi. 54; ix. 113, 122.
- School Board, vi. 54.

**FRAUD**, vi. 54. *See* Circumvention ; Dole.  
 misrepresentation, vi. 55.  
 innocent and fraudulent, vi. 55.  
 how committed, vi. 55.  
 fraudulent statement, vi. 56.  
 statement of fact, vi. 57.  
 ambiguous statement, vi. 58.  
 fraudulent acts, vi. 58 ; xii. 79.  
 fraudulent concealment, vi. 58.  
 duty to disclose, vi. 58.  
 material inducement, vi. 59.  
 damage, vi. 59.  
 responsibility of principal for agent,  
     vi. 60 ; x. 22.  
 representative's liability, i. 67.  
 communication of fraudulent statement,  
     vi. 60.  
 contract induced is voidable, not void,  
     vi. 60.  
 partial reductions, vi. 61.  
 proof of, vi. 62 ; ix. 143 ; xii. 335.  
 remedies, vi. 63.  
 personal bar, ii. 27.  
 by apprentice, i. 289.  
 by joint stock companies, vii. 115, 135,  
     149.  
 by partner, ix. 161, 176.  
 criminal law, vi. 63.  
     false representations directly made,  
         vi. 63.  
     false representations not directly made,  
         vi. 64.  
 reference to deeds, vi. 64.  
 weights and measures, vi. 64.  
 stage at which fraud criminal, vi. 65.  
 stage at which action becomes criminal,  
     vi. 65.  
 verbal fraud, vi. 65.  
 written, vi. 65.  
 practical, vi. 65.  
 post office offences, ix. 371.  
 indictment, vi. 65.  
 previous conviction, vi. 65.  
 punishment, vi. 65.

**FRAUDULENT BANKRUPTCY**, vi. 65.  
*See* Bankruptcy.

**FRAUDULENT DIMINUTION OF—**  
 legitim fund, xii. 79.

**FRAUDULENT ENLISTMENT**, v. 26.

**FRAUDULENT PREFERENCES**, ii. 9 ;  
     vii. 11.

joint stock companies, vii. 164.

**FREEHOLDER**. *See* Franchise.

**FREIGHT**, vi. 70 ; ii. 401. *See* Marine  
 Insurance ; Average ; Adjustment ; Bill  
 of Lading ; Charter-Party.  
 rate, vi. 70.  
 back, ii. 401.  
 dead, iv. 91.  
 lump, ii. 402 ; vi. 70.  
 time, vi. 70.  
 advance, vi. 71.  
 through freight, vi. 71.  
 insurance, i. 115 ; vi. 72.  
 liability of endorsee for, ii. 131.  
 bonds over, ii. 201.  
 seamen's lien over, xi. 107.

**FRIENDLY SOCIETIES**, vi. 72. *See*  
 Building Societies ; Clubs ; Industrial  
 and Provident Societies ; Trade Unions.  
 history of legislation, vi. 72.  
 meaning of society, xiv. 37.  
 registered, vi. 73.  
     nature and description under Act 1896,  
         vi. 73.  
     cattle insurance, vi. 74.  
     benevolent, vi. 74.  
     working men's clubs, v. 74.  
     specially authorised, vi. 74.  
     registry office, vi. 75.  
     conditions of registration, vi. 75.  
     societies with branches, vi. 76.  
     cancelling suspension of registry, vi. 76.  
     rules and amendments, vi. 76.  
     duties and obligations, vi. 77.  
     obligations of officers, vi. 77.  
     privileges, vi. 77.  
     rights of members, vi. 78.  
     property and funds, vi. 78.  
     payments on death of member, vi. 79.  
     payments on death of children, vi. 80.  
     change of name, vi. 80.  
     amalgamation, vi. 80.  
     conversion into company, vi. 80.  
     inspection of affairs, vi. 81.  
     disputes, vi. 81.  
     termination, vi. 84.  
     disposal of unexpended funds, vi. 85.  
     offences and penalties, vi. 85.  
     legal proceedings, vi. 86.  
 collecting and industrial assurance, vi. 87.  
     description, vi. 87.  
     duties and obligations, vi. 87.  
     collectors, vi. 88.

- FRIENDLY SOCIETIES—*continued.*  
 collecting and industrial assurance—*continued.*  
 disputes, vi. 88.  
 offences, vi. 88.  
 unregistered, vi. 90.  
 appeal to Court of Session, xiv. 6.  
 assignation of shares in security, vi. 89.  
 Borrowing Powers Act, 1898, xiv. 37.  
 exemption from income tax, vi. 89, 299.  
 liability of funds, vi. 89.  
 Money-Lenders Act, xiv. 54.  
 recovery of subscriptions, vi. 89.  
 registrar of, x. 239.  
 wills by members, xii. 93, 94.
- FRUCTUS PENDENTES*, vi. 91.
- FRUCTUS PERCEPTEI*, vi. 91.
- FRUITS, vi. 91. *See* Apportionment Act ; *Bona fides* ; Heritable and Moveable ; Liferent.
- industrial, vi. 91.
- natural, vi. 91.
- civil, vi. 92.
- FRUSTRA PROBATUR QUOD PROBATUM NON RELEVAT.* *See* Evidence.
- FUEL, v. 254.
- FUGITATION, vi. 93.  
 competency, vi. 93.  
 effect, vi. 97 ; vi. 94.  
 recal, vi. 94.  
 Inferior Courts, vi. 95.
- FUGITIVE OFFENDERS, vi. 95.  
 application of Statute, vi. 95.  
 from Scotland, vi. 95.  
 to Scotland, vi. 95.
- FULL BLOOD, vi. 122.
- FUND IN MEDIO, viii. 379.
- FUND—  
 county, iii. 353.
- FUNDS—  
 friendly societies, vi. 78, 85.  
 poor law, ix. 332.
- FUNERAL EXPENSES, vi. 98, 248 ; xii. 132, 355. *See* Deathbed Expenses ; Privileged Debts.  
 cremation, xiv. 37.
- FUNGIBLES, vi. 98 ; viii. 127.
- FURIOS ; FURIOSITY. *See* Insanity.
- FURIOUS AND RECKLESS RIDING OR DRIVING, vi. 99.
- FURLough, iv. 209.
- FURNISHED LODGINGS—  
 inhabited house duty, vi. 349.
- FURNITURE, vi. 99. *See* Liferten.  
 articles lent on hire, vi. 99.  
 articles on loan or deposit, vi. 100.  
 landlord's hypothec, vi. 245.  
 poinding of, ix. 294.  
 wife's *praepositura*, ix. 378.  
 property of inmates, vi. 100.  
 sale of, xi. 13.  
 securities over, xi. 145, 146.
- FURTHCOMING. *See* Arrestment and Furthcoming.
- GABLE, COMMON, iii. 125 ; ix. 185 ; xiv. 20.
- GAME, FOREIGN, viii. 47.  
 licence to deal in, viii. 45.  
 licence to kill, viii. 47.  
 tenants' rights, vii. 335.
- GAMEKEEPER—  
 Stamp Acts, xi. 443.  
 licence, viii. 49.
- GAME LAWS, vi. 103.  
 Ground Game Act, vi. 145.  
 what animals included, vi. 103.  
 swans not included, xii. 222.  
 place, vi. 104.  
 seasons, iii. 62 ; vi. 104.  
 mode of capture, vi. 105.  
 landed qualification, vi. 105.  
 sporting right an incident of ownership, vi. 105.
- GAMING AND BETTING, vi. 106 ; xiv. 37.  
 rights of agents and brokers, vi. 109.  
 wagering on differences, vi. 108.  
 card sharpening, ii. 295.
- GAOLS. *See* Prisons.
- GAS, vi. 113.  
 construction of works and supply, vi. 114.  
 lands, vi. 114.  
 breaking up streets, vi. 114.  
 sale of, vi. 114.  
 income tax, vi. 271-273.  
 rating, x. 202.  
 burgh supply—  
 commissioners, vi. 115.  
 power and obligations of commissioners, vi. 115.  
 borrowing powers, vi. 116.  
 guarantee rate, vi. 116.

- GAS—*continued.*  
 burgh supply—*continued.*  
   sinking fund, vi. 116.  
   rents, vi. 116.  
   breaking up street, vi. 117.  
   supply of, vi. 117.  
   pressure and quality, vi. 117.  
   recovery of rates, vi. 117.  
   provisions, vi. 117.  
   special district lighting, vi. 118.
- GAZETTES, vi. 118.  
 notices of—  
   appointment of judicial factor, iv.  
     110.  
   confirmation of executors, iii. 197;  
     v. 149.  
   brieve from Chancery, ii. 222.  
   *cessio bonorum*, ii. 370.  
   contagious diseases (animals), iii. 250.  
   epidemic diseases, x. 102.  
   sequestration, xi. 175–179, 181, 196.  
   statutory rules, xii. 11.  
   trawling byelaws, xii. 302.  
   vexatious actions, xiii. 119.
- GENERAL ASSEMBLY, iii. 16. *See* Church Courts.  
 Commissioner to the, iii. 116.
- GENERAL DISPOSITION. *See* Disposition.
- GENERAL REGISTER OF SASINES, xi. 111, 119; x. 247. *See* Register.
- GENERAL SERVICE, xi. 264. *See* Service, xii. 54.  
 ship, xi. 119.  
 words in will, xii. 112–117.
- GERMAN, FULL BLOOD, vi. 122. *See* Degrees of Kinship; Succession.
- GESTIO PRO HEREDE, vi. 122.  
 Scots law, ix. 187.
- GESTURES, THREATENING, i. 328.
- GIFT, iv. 333.  
 by impleation, vii. 374; xii. 117, 118.  
 by tutors nominate, xiii. 14.  
 of bastardy, vi. 122; vii. 302.  
 testamentary, xiii. 103–105.  
   directions consistent with, xiii. 88–90.  
   directions repugnant to, xiii. 90, 91.
- GIRLS IN COAL MINES, iii. 67.
- GLASGOW—  
 boundaries, xi. 120.  
 Corporation of, ix. 306.  
 Police Court, ix. 319.
- GLASGOW—*continued.*  
 procurators in, x. 63.  
 University, xiii. 41.
- GLEBE, vi. 123.  
 Act, Ecclesiastical Buildings and, iv.  
     367.  
 Ann, i. 228.  
 designation, iv. 212.  
 exempt from ecclesiastical assessments,  
     xiv. 28.  
 minerals under, viii. 342.  
*quoad sacra* parish, ix. 125.
- GOLD BULLION, ii. 239.  
 mines, vi. 125; i. 208; x. 235.  
 plate, xi. 340.  
 treasure-trove, xii. 309.
- GOLFING, vi. 125.
- GOOD FRIDAY, xii. 263.  
 bills of exchange, ii. 83.
- GOODS. *See* Sale.  
 arrestment, i. 312, 315, 316. *See* Sale  
   of Goods Act; Bill of Lading.  
 carriage of, ii. 296; x. 349.  
 contraband of war, iii. 262–264.  
 delivery of, iv. 182.  
 destruction of, x. 349, 350.  
 in communion, iii. 143.  
 in warehouse, xi. 146.  
 lost by carrier, ii. 297.  
 railway, x. 146.  
 restitution of, x. 325.  
 retention of, x. 331.  
 search for stolen, x. 12.  
 the mixing of, iii. 122.  
 warranty for, xi. 465.
- GOODWILL, vi. 126; ix. 174.  
 nature, vi. 127.  
   definitions, vi. 127.  
 rights carried by transfer, vi. 127; xiv. 37.  
   possession of old premises and stock,  
     vi. 127.  
   carrying on old business, vi. 128.  
 position of transferor after transfer,  
     vi. 129; x. 329; xiv. 37.  
 disposal by voluntary sale, vi. 133.  
 disposal by way of mortgage or  
   security, vi. 134.  
 transmission through bankruptcy, vi.  
     134.  
 disposal on dissolution of partnership,  
     vi. 134; ix. 152.

- GOODWILL—*continued.*  
 position of transferor after transfer—*continued.*  
 disposal on death, vi. 135.  
 as compensation upon compulsory taking of lands, vi. 136.  
 affecting rateable value, vi. 137.  
 succession, xii. 42.
- GOVERNESS, vi. 206–217.
- GOVERNMENT ANNUITIES, ix. 367.  
 purchase of, i. 236.
- GOVERNMENT DUTIES. *See* Account Duty; Estate Duty; Legacy and Succession Duty; Settlement Duty.
- GOVERNMENT FUNDS—  
 arrestment of, i. 234.
- GOVERNMENT PAY, xi. 209.  
 railway obligations to, x. 165.  
 stock, xii. 372.
- GOWPEN, vi. 137.
- GRACE, ACT OF, i. 57.  
 days of, iv. 89.
- GRADUATION. *See* Universities.
- GRANDFATHER AND GRANDCHILDREN, iv. 164, 165; vii. 75.  
 aliment of grandchildren, i. 194, 195.  
 aliment of grandfather, i. 192, 197.  
 aliment of illegitimate grandchild, i. 196.  
 as administrator-in-law to grandchildren, xiii. 2.  
 heritable succession, xii. 45–48.  
 moveable succession, xii. 77.
- GRASS, vi. 138; iv. 1.  
 hypothec, vi. 244.  
 of ministers, vi. 138.
- GRASSUM, vi. 139.
- GRATUITOUS DEED. *See* Conjunct and Confident; Clause of Return; Warrantice.
- GRAVESTONES, vi. 141.
- GREAT AVIZANDUM, i. 367.
- GREAT SEAL, x. 26; xi. 103.
- GREENOCK POLICE COMMISSIONERS, ix. 307.
- GREGORIAN CODE, iii. 79.
- GROCER—  
 breach of certificate, viii. 68.  
 charges of breach of certificate, viii. 65.  
 liable to shebeen penalty, viii. 68.
- GROUND-ANNUAL, vi. 141.  
 church lands, vi. 141.  
 building feus, vi. 141.  
*grassum*, vi. 139.  
*debitum fundi*, iv. 108.  
 poinding of the ground, ix. 300.
- GROUND GAME ACT, 1880, vi. 145.  
*See* Game Laws.
- GROUNDS AND WARRANTS. *See* Reduction.
- GROWING CORN. *See* Corn.
- GUARANTEE. *See* Cautionary Obligations.  
 association, vii. 195.  
 to a bank, viii. 36.  
 must be in writing, i. 30.
- GUARANTY (MERCANTILE), vi. 147; x. 19.
- GUARDIANSHIP OF INFANTS ACT, 1886, vi. 151; xiii. 1–6. *See* Custody of Children; Minor; Pupil; Tutor.
- mother, vi. 151; xiii. 24.  
 mother's second marriage, xiii. 21.  
 power of mother to appoint, vi. 152; xiii. 4.
- Court may make orders, vi. 152.  
 powers of Court to remove, vi. 153; xiii. 22.
- divorce or judicial separation, vi. 153.  
 application to Scotland, vi. 153.  
 interpretation of terms, vi. 153.  
 rules as to procedure, vi. 153.  
 tutors, vi. 154. *See* Tutors.  
 saving clause, vi. 154.
- GUILD, vi. 154. *See* Dean of Guild; Exclusive Privilege; Incorporation.
- GUN LICENCE, vi. 154; xiv. 37.  
 spring, xi. 390.
- GUNPOWDER, v. 178.
- GYPSIES, iv. 383. *See* Egyptians.  
 nuisance, ix. 45.
- HABEAS CORPUS ACT, vi. 155. *See* Wrongful Imprisonment; Criminal Prosecution.
- HABIT AND REPUTE, vi. 155.  
 proof, vi. 156.  
 verdict of jury, vi. 156.  
 as proof of marriage, vi. 157. *See* Marriage.
- HABITUAL DRUNKARDS. *See* Drunkards (Habitual).
- HACKNEY COACHMEN, vi. 157; x. 101.

HALF-BLOOD, vi. 158.

relations consanguinean, iii. 213 ; vi. 158.  
relations uterine, vi. 158 ; xiii. 55.

HALLS—

inhabited house duty, vi. 345.

HAMESUCKEN, vi. 159.

place where, vi. 159.

person on whom, vi. 159.

manner in which crime must be committed, vi. 159.

punishment, vi. 160.

HANDWRITING, iii. 144 ; vi. 38.

HARBOURS. *See* Ports and Harbours.

HARBOUR MASTER, iii. 356.

HARBOURING THIEVES, x. 11.

HARES, vi. 105, 160 ; viii. 48.

close time, iii. 63 ; vi. 161.

day poaching, ix. 289.

night poaching, ix. 288.

HASP AND STAPLE, ii. 53 ; xii. 56.

HAT-MONEY, vi. 161.

HAVER. *See* Witness ; Admissions ; Evidence ; Citation.

deposition of deceased, ii. 63.

in arbitrations, xiii. 205.

commission, proof by, iii. 107.

pupil as, xiii. 16.

HAWKER. *See* Pedlar.

petroleum, ix. 264.

HAWKING. *See* Hunting and Hawking.  
exciseable liquors, viii. 67, 68.

HEALTH. *See* Public Health Act.

bill of, ii. 124, 125.

HEARING—

appeal to Circuit Court, i. 253.

appeal to Court of Session, i. 261.

appeal to House of Lords, i. 272.

appeal to Sheriff Principal, i. 279.

appeals to Quarter Sessions, i. 276.

Debts Recovery Court, iv. 114.

summary prosecution, iii. 389, 392.

HEARSAY, EVIDENCE. *See* Evidence.

HEATH, HEATHER, viii. 376.

HEIR, vi. 162 ; x. 13. *See* Heir and Executor.

*actio personalis moritur cum persona,*  
i. 65.

administration of charitable trusts, ii. 396.

ancestor's debts, i. 206, 222, 237 ; xii. 51,  
74, 127.

heir-apparent, i. 243 ; vi. 176 ; xii. 58.

disentail, v. 43.

HEIR—*continued.*

heir-apparent—*continued.*

back bond, i. 369.

*beneficium inventarii*, ii. 58.

*jus deliberandi*, xii. 51.

passive title in heritage, ix. 187.

succession, xii. 50, 52.

titles of honour, xii. 51.

birth of nearer, xii. 58.

casualty of relief, xii. 169, 178.

claiming legitim, iv. 386-392 ; xii. 78.

collating, iii. 90 ; xii. 85 ; xiv. 79.

defeating predecessor's creditors, xii. 56.

entry with superior, xii. 155, 156.

intestate succession, vi. 162 ; xii. 44, 49,  
330.

*in utero*, xiii. 70.

last, vii. 302.

liability of, vi. 171.

order of liability of, vi. 172.

meaning of heir, heir-male, etc., vi. 165 ;  
xii. 61, 63.

of provision, vi. 164. *See* Entail.

liabilities of, vi. 171.

re-execution of arrestments, i. 316.

resulting trusts, xii. 336-338.

rights of, vi. 170 ; xii. 43, 74.

title and completion thereof, iii. 46 ;  
vi. 169 ; xi. 263 ; xii. 53, 55.

vesting in, iv. 289.

violent profits, xiii. 125.

HEIR AND EXECUTOR—

accounting between, i. 284 ; xii. 316, 317.

as defenders, iv. 160.

fixtures, vi. 29.

obligations under lease, vii. 337.

relief between, vi. 174 ; xii. 129.

HEIRS AND BAIRNS, i. 377 ; vi. 176.

HEIRSHIP MOVEABLES, vi. 177.

*gestio pro hærede*, ix. 189.

paintings and pictures, ix. 107.

succession, xii. 41, 53.

HEIRS-PORTIONERS, vi. 178 ; x. 13.

collation, iii. 91 ; xii. 86.

common property, iii. 137-139.

conquest, iii. 211.

heirship moveables, xii. 53.

intestate succession, vi. 162.

mansion-house, viii. 209 ; xii. 48, 49.

succession, xii. 45, 46, 47, 48, 49.

succession, entail, xii. 67.

titles of honour, xii. 48.

- HERALD, viii. 178.
- HEREZELD, vi. 180.
- HERITABLE AND MOVEABLE, vi. 180 ;  
xiv. 37.
- things, vi. 181.  
fixtures, vi. 24.  
heirship moveables, vi. 177.  
paintings and pictures, ix. 106.
- rights, vi. 181.
- constructive conversion, vi. 181.  
unfulfilled contracts, vi. 181.  
conversion *mortis causa*, vi. 182.
- HERITABLE JURISDICTION, vi. 184.
- HERITABLE SECURITIES, vi. 185. *See*  
Creditor (Heritable); Disposition (Abso-  
lute); Bond and Disposition in Secur-  
ity; Infestment; Notarial Instrument;  
Searches; Power of Sale.
- definitions, vi. 185.
- earlier forms, vi. 185.
- wadset, vi. 186.
- modern forms, vi. 186.
- capacity to grant, vi. 187 ; xiii. 14, 15.
- title to grant, vi. 187.
- securities under entail, vi. 188.
- granted on incomplete title, vi. 188.
- over superiority, iv. 108.
- creditor's power to feu, ii. 180.
- cannot be entailed, xii. 66.
- custody of title, ii. 176.
- ejection of debtor, iv. 384.
- writ of acknowledgment, xii. 155.
- creditor's succession, vi. 192.
- debtor's succession, vi. 192.
- estate duty, xi. 123.
- Lands Clauses Acts, vii. 293, 296.
- reduction of title of granter, vi. 189.
- international law, vi. 190.
- in competition with other rights, vi. 190 ;  
ix. 299, 302.
- adjudger, vi. 191.
- contracts made by debtor, vi. 193.
- inhibition, vi. 191.
- public burdens, vi. 190, 275.
- rights of superior, vi. 190 ; vii. 69.
- widow's terece, vi. 191.
- extinction, vi. 194.
- HERITABLE SECURITIES ACT, 1894,  
ii. 178 ; viii. 186.
- stamp duty, xi. 6.
- HERITABLE SUCCESSION. *See* Suc-  
cession.
- HERITAGE. *See* Sale.  
alien holding, i. 190.  
proof of obligations regarding, vi. 195.  
defined, xi. 10.
- assumed trustees, i. 343.
- corporations holding, vi. 313.
- friendly societies holding, vi. 79.
- sale of, xi. 8.
- questions of reparation affecting, x. 283-  
284, 287, 288-292.
- Sheriff Court jurisdiction, xi. 310.
- trustees' power to sell, xii. 43.
- unclaimed, xi. 373.
- wills executed abroad affecting, xiii. 191.
- forfeiture of, xii. 307.
- HERITORS, vi. 195.
- augmentation, i. 355-361.
- churches, parliamentary, ix. 130.
- churches upkeep of, vii. 275-278.
- corporation as, xiv. 38.
- ecclesiastical assessments, xiv. 28.
- kirkyards, ii. 268 ; vi. 141 ; ix. 117.
- disjunction and annexation, iv. 248.
- enclosing of lands, ix. 273.
- enforcing vaccination, xiii. 56.
- glebe, vi. 123.
- manse, viii. 203-208.
- no right to stranded whales, xi. 102.
- quoad sacra parish, ix. 124.
- seats in churches, xi. 126-132.
- relief of poor, ix. 332.
- rights *inter se*, ix. 405.
- right to usufruct of stream, x. 355.
- HERMOGENIAN CODE. *See* Codex.
- HERRING FISHINGS, vi. 6.
- trawling, xii. 303, 304.
- use of waste land, xi. 101.
- HERSHIP, vi. 196.
- HIGH COURT OF JUSTICIARY. *See*  
Justiciary (High Court of) ; Appeal.
- HIGH TREASON, xiii. 147.
- HIGHWAYS, vi. 197 ; x. 369.
- history of legislation, vi. 198.
- statute labour roads, vi. 198.
- turnpike roads, vi. 198.
- right of way, x. 344.
- surveyor of, xii. 205.
- HINC INDE, vi. 199.
- HIRING, vi. 199.
- election illegal, iii. 336.
- of custody, vi. 217.
- wharfingers, vi. 217.

- HIRING**—*continued.*
- of custody—*continued.*
    - warehousemen, vi. 218.
    - stablers, etc., vi. 219; vi. 232; x. 348.
    - pasturage of cattle, vi. 220.
    - lien of custodian, vi. 220.
  - of moveables, vi. 199.
    - furniture, vi. 199.
    - hirer's obligations, vi. 201.
    - lessor's obligations, vi. 200.
    - hire purchase, v. 204–210; vi. 202; xi. 5, 30.
    - reputed ownership, vi. 202.
    - landlord's hypothec, vi. 245.
  - of service, vi. 203; xi. 104; xii. 226, 320–325. *See* Apprentice; Master and Servant; Reparation; Seamen; Workmen.
    - parties to contract, vi. 203.
    - constitution of contract, vi. 204.
    - duration of contract, vi. 206; xiv. 38.
    - obligations of parties to contract, vi. 207.
    - servants' remedies, vi. 214.
    - master's liability for servant's contracts, vi. 215.
    - servant's liability for contracts, vi. 215.
    - termination of contract, vi. 215.
  - prescription, x. 129.
- HOLDINGS**—
- agricultural, i. 172.
  - burgage, ii. 247.
  - crofters, iii. 393.
  - fendal, xii. 158.
  - udal, xiii. 28.
- HOLIDAYS**, vi. 221.
- banks, vi. 221.
  - Customs and Inland Revenue, vi. 221.
  - bills of exchange, ii. 83.
  - Factory and Workshops Acts, v. 225.
  - bail, i. 374.
- HOLOGRAPH WRITINGS**, vi. 221. *See* Will, x. 47. *See* Deeds, Execution of, what are? vi. 221.
- presumption in case of, vi. 222; ix. 25.
  - erasures, deletions, etc., vi. 222.
  - subscription of deeds, iv. 142; vi. 223.
  - can they prove their date? iv. 87; vi. 224.
  - vicennial prescription, xiii. 120.
- HOLYROOD, ABBEY OF**, xi. 86.
- bailie of, i. 377.
- HOMICIDE**, vi. 224.
- assythement, i. 343.
  - casual, ii. 307.
  - corpus delicti*, iii. 318.
  - culpable, iv. 23.
  - justifiable, vii. 272.
- HOMOLOGATION**, vi. 224.
- of testaments, xiii. 202.
  - personal bar, ii. 27.
- HONORATIUM**, vi. 227.
- HONOURS**. *See* Dignities.
- forfeiture of, xii. 307.
- HORNING, LETTERS OF**, vi. 228; xii. 218.
- HORNINGS, REGISTER OF**, ii. 392.
- HORSE**, vi. 230.
- bolting, i. 30.
  - breaking enclosures, ii. 216.
  - dangerous, i. 223.
  - hiring of, vi. 219; x. 348.
  - violently stopping a, i. 328.
- HORSEFLESH, SALE OF**, xi. 64.
- HOSPITALS**, x. 100.
- income tax, vi. 277, 347.
- HOTEL KEEPER**—
- charges for breach of certificate, viii. 62.
- HOUSE**—
- lodging, iii. 135; vi. 239.
  - prescription, xii. 312.
  - rents, x. 280.
  - unhealthy, vi. 238.
- HOUSEBREAKING**, vi. 233; x. 11.
- what constitutes “forcible entry,” vi. 233.
  - breaking out of house, vi. 234.
  - modus in libel*, vi. 234.
  - punishment, vi. 235.
  - housebreaking implements, vi. 235.
- HOUSE OF COMMONS**. *See* Parliament.
- history, iii. 140.
  - powers, iii. 141.
  - privileges, iii. 141.
- HOUSE OF LORDS**. *See* Lords.
- HOUSING OF THE WORKING CLASSES**,
- i. 327; viii. 318; xiv. 38.
  - unhealthy areas, vi. 237.
  - unhealthy dwelling-houses, vi. 238.
  - obstructive buildings, vi. 238.
  - buildings unfit for habitation, vi. 238.
  - lodging-houses, vi. 239.
  - Small Dwellings Acquisition Act, xiv. 38.

HUNTING, LANDLORD AND TENANT, vi. 105, 106.

HUNTING AND HAWKING, xiv. 38.

HUSBAND AND WIFE, vi. 239. See Adherencee Conjunet; Free Conjunet; Rights; Courtesy; Divorce; *Donatio inter virum et uxorem*; Aliment; *Jus relictar*; Judicial Separation; *Jus mariti*; Marriage; Marriage-Contract; Will; Succession.  
as witnesses, xiii. 209, 210, 211.  
communications between, iii. 185.  
*communio bonorum*, iii. 144.  
destination to, viii. 120.  
domicile, iv. 327.  
husband as executor-dative, v. 142.  
liability for wife's action, iv. 331; xiv. 31.  
personal rights and duties, vi. 239.  
sale of furniture to wife, viii. 303.  
sequestration, xi. 212.  
infestment *ex propriis manibus*, vi. 338; xi. 87.  
legal rights of divorced parties, iv. 312.  
life insurances, viii. 90.  
oath on reference, ix. 69; i. 240.  
partnership, ix. 154.  
poor law obligations, ix. 339.  
*præpositura*, ix. 378.  
reparation, x. 286, 287.  
settlement policies, viii. 104.  
wife. See Terce.  
    *a mensa et thoro*, i. 220.  
    action against, xii. 280, 281.  
    agency, i. 164.  
    annuities, i. 232; xii. 359.  
    antenuptial debts, i. 239.  
    conjugal rights, iii. 203.  
    consent of, iii. 214.  
    *curator ad litem* to, iv. 45.  
    discharge of legitim, xii. 106.  
    divisions of husband's property, xii. 82-87.  
    election legitim, xii. 106.  
    estate immixed, bankruptcy, viii. 302.  
    executing will, xiii. 192.  
    funeral expenses, xii. 132.  
    furniture, vi. 100.  
    heritage, xi. 8.  
    inhibition of, vi. 358.  
    insane, cognition, xiii. 26.  
    insurance policy, xii. 84.

HUSBAND AND WIFE—*continued*.  
wife—*continued*.  
    jointure, vii. 168.  
    liability to aliment husband, i. 192, 202; vi. 240.  
    marriage, *pendente processu*, xii. 281.  
    marrying paramour, i. 138.  
    oath, i. 240.  
    paraphernalia, ix. 108.  
    prescription, xii. 317.  
    provision to, i. 339.  
    title to sue, iv. 159; xii. 269, 270, 271, 280.  
    wrongs committed by, iv. 21.

HYPOTHEC, vi. 241. See Sequestration.  
definition, vi. 241.  
pledge, distinctive from, ix. 279.  
of law agent, vi. 241.  
    nature of right, vi. 241.  
enforcement, vi. 241.  
compensation by party liable, vi. 242.  
right of agent to proceed with action, vi. 242.  
of landlord, iv. 48; vi. 243.  
persons entitled to exercise, vi. 243.  
rent secured by, vi. 244.  
retention of goods, vi. 246.  
warrant to bring goods back, vi. 247.  
plenishing order, vi. 247.  
assignation of, vi. 246.  
sequestration, vi. 247.  
procedure, vi. 247.  
sale of effects, vi. 248.  
interdict against sequestration, vi. 248.  
damages for improper sequestration, vi. 248.  
competition, vi. 248.  
agricultural subjects and sub-lease, iii. 314; iv. 1, 212; vi. 244.  
bowing of cows, ii. 206.  
effect in questions about crop, vi. 244.  
urban leases, vi. 245, 99.  
furniture belonging to third parties, vi. 245.  
sub-lease in urban subjects, vi. 246.  
in mines, vi. 246.  
maritime, ii. 197; vi. 249.  
    nature of right, vi. 249.  
personal liability a condition, vi. 249.  
recognised, vi. 250.  
collision, vi. 250.  
seamen, vi. 250.

- HYPOTHEC—*continued.*  
 maritime—*continued.*  
   preference of, vi. 251.  
   superior, vi. 249.
- ICE CREAM SHOPS, xiv. 61.
- ID CERTUM EST QUOD CERTUM REDDI POTESTI*, vi. 251.
- IDENTIFICATION ; IDENTITY, vi. 251.  
 productions, vi. 252.  
 mistaken identity, vi. 252.
- IDIOT. *See* Insane Persons.
- ID TANTUM POSSUMUS QUOD DE JURE POSSUMUS*, vi. 252.
- IGNORANTIA JURIS NEMINEM EXCUSAT*, vi. 252.
- ILLEGAL AND IMMORAL CONTRACTS,  
 vi. 253.  
 illegal, vi. 252, 253.  
   buying of bidders, i. 351, 352.  
   by directors, xii. 354.  
   by trustees, xii. 254.  
 contracts which are void, vi. 253.  
 contracts which are void by Statute,  
   vi. 253.  
 contracts which are void at common  
   law, vi. 253.  
 contracts which the law refuses to enforce,  
   vi. 254.  
 contracts on which a penalty is imposed,  
   vi. 254.
- ILLEGAL DRILLING, iv. 258.
- ILLEGAL OBLIGATIONS, iii. 177, 178.
- ILLEGITIMATE CHILDREN. *See* Bas-  
 tard ; Gift of Bastardy ; Last Heir ;  
 Succession ; Custody of Children ;  
 Aliment ; Legitimacy ; Legitimation.
- IMBARGO, v. 20.
- IMBECILE. *See* Insane Persons ; Insanity ;  
 Circumvention (Faculty of) ; Weak and  
 Facile.  
 rape, x. 175.
- IMMORAL TRAFFIC (SCOTLAND) ACT,  
 xiv. 39. *See* Criminal Law Amend-  
 ment Act.
- IMPEACHMENT, vi. 255.
- IMPIGNORATION, ix. 278.
- IMPLIED GRANTS, xi. 275.  
 trust, xi. 339.
- IMPOSITION, v. 250. *See* Fraud.
- IMPOTENCY AS IMPEDIMENT TO  
 MARRIAGE, viii. 246.
- IMPRESSIONMENT OF CARRIAGES, vi. 255.
- IMPRISONMENT. *See* Punishment ;  
 Prisons ; Arbitrary Punishment ;  
 Apprehension.  
 alimentary debt, i. 193 ; xii. 218.  
 breach of interdict, ii. 209.  
 breach of trust, ii. 215.  
 caption, process, ii. 294.  
 contempt of Court, iii. 256 : xii. 219.  
 conviction, summary, iii. 283.  
 default of payment of fines, xiv. 39.  
 deforcement, iv. 163.  
 failure to implement decree, xii. 218.  
 failure to implement obligations, xii.  
   218.  
 for debt, ii. 218 ; vi. 256 ; xi. 86, 87.  
 fraudulent voting, xiii. 46.  
*meditatio fugæ*, viii. 319 ; xii. 218.  
 non-payment of taxes, xii. 218.  
 non-vaccination, xiii. 57.  
 of apprentice, i. 290.  
 of corporate bodies, ii. 6.  
 of witness, xiii. 205.  
 under Debtors Act, ii. 4, 5.  
 where charge necessary before, ii. 392.  
 wrongful. *See* Malicious Prosecution.
- IMPROBATION OF DEEDS, vi. 259.  
 abiding by deed, i. 10.
- IMPROBATORY ARTICLES, i. 10.  
 reduction, x. 231.
- IMPROVEMENT OF LANDS ACT, 1899,  
 xiv. 39.
- IMPROVEMENTS, i. 154.  
 agricultural lease, i. 173 ; vii. 345. *See*  
   Meliorations.  
 crofters' holdings, iii. 397.  
 entail, v. 47-49.  
   planting and enclosing of lands, ix. 272.  
   rating, x. 181.
- IMPUTATIONS, DEFAMATORY, iv. 146.
- INARTICULATE WITNESSES, xiii. 207.
- INCAPACITY. *See* Capacity.
- INCENDIARY, v. 345, 348.
- INCEST, vi. 260, 159, 160.
- INCHOATE BILLS, ii. 86.
- INCITING TO MUTINY OR DESERTION,  
 xi. 162.
- INCOME—  
 advances from accumulated, xii. 369, 370.  
 allowance from, xii. 370.  
 bonuses, ii. 188.  
 capital and, ii. 289.

**INCOME—*continued.***

charges against, xii. 355.  
payment of annuities, i. 233.  
tutor applying income for heritable obligations, xiii. 14.

**INCOME TAX, vi. 261; xiv. 39.**

general scope, vi. 262.

officials—

general commissioners, vi. 263.  
additional commissioners, vi. 264.  
special commissioners, vi. 264.  
commissioners appointed to special duties, vi. 264.

clerk to commissioners, vi. 264.

assessors, vi. 265.

collectors, vi. 265.

surveyors and inspectors, vi. 265.

Commissioners of Inland Revenue, vi. 265.

who are to be charged, vi. 266.

corporations, vi. 266; vii. 144.

married women, vi. 266.

trustees, vi. 266.

shipowners, xi. 334

the Crown, vi. 266.

parties entitled to exemption, vi. 267.

married women, vi. 268.

friendly societies, vi. 89.

trade unions, xii. 296.

certain Colonial investments, xiv. 40.

procedure for claiming exemption, vi. 268.

rules and regulations as to estimating annual values and charging duties, vi. 269-307.

general provisions—

procedure before assessment, vi. 306.

relief from double asset, vi. 307.

collection, vi. 307.

penalty for refusing deduction, vi. 307.

failure to make correct statement, xiv. 39.

appeals, vi. 307.

**INCOMPETENCY, vi. 309.**

defect of jurisdiction, vi. 309; xii. 299.

personal objections, iv. 122, 123; vi. 309; xii. 299.

**INCORPORATED SOCIETY OF LAW AGENTS, vii. 308, 325.****INCORPORATION, vi. 310. *See Burgh; Friendly Societies; Guild; Company; Partnership; Town Council.*****INCORPORATION—*continued.***

arrestment and forthcoming, i. 315; xiv. 8.

as trustees, xii. 349.

bills of exchange, ii. 88.

by-laws, vi. 313.

citation of, iii. 28.

common seal, vi. 312.

constitution, vi. 311.

domicile of, iv. 326.

entry with superior, xii. 177.

income tax, vi. 266.

issuing negotiable instruments, ix. 6.

liability as heritors, xiv. 38.

malice, viii. 192.

oath in bankruptcy, ix. 59.

power to act within scope of purposes, vi. 313.

powers to hold property, vi. 313.

powers to sue, vi. 312.

reparation, x. 286, 287.

rating, x. 187.

valuation roll, i. 331.

extinction of, vi. 314.

**INCORPOREAL, iii. 317.****INCUMBRANCES. *See Burdens; Heritable Securities; Search of Incumbrances.*****INDECENT ADVERTISEMENTS, i. 140.**

pictures, ix. 87; x. 11.

practices, etc., vi. 315; x. 11. *See Crime.*

aggravations, i. 171; vi. 315.

between males, iii. 378.

indecent behaviour, vi. 315.

**INDECENT WORKS, ix. 87.**

price of printing, x. 27.

**INDEFINITE PAYMENTS, ix. 236.****INDEMNITY AGENCY, i. 168; xii. 21.**

by sub-contractor, xiii. 223.

by third party, xiii. 223.

cautionary obligations distinguished from contract of, ii. 317.

fire insurance, v. 332.

plea in bar of trial, ii. 31.

subrogation, xii. 34.

**INDENTURE (APPRENTICESHIP), i.**

289; vi. 316.

form of, i. 291.

sea apprentice, i. 289.

W. S. apprentices, xii. 227.

discharge of, i. 290.

- INDIA MILITARY SAVINGS BANKS, xi. 92.
- INDIAN AND COLONIAL STOCKS, xiii. 13.
- INDICTMENT, i. 186; iii. 381; vi. 316.
- clerical error in, iii. 52.
  - for bigamy, ii. 65.
  - for breach of trust, ii. 215.
  - for coining, iii. 86.
  - for concealment of pregnancy, iii. 165.
  - for culpable homicide, iv. 26.
  - for murder, viii. 393.
  - for perjury, ix. 257.
  - locus delicti*, viii. 142.
  - new form, i. 186; iii. 381; vi. 317.
  - old form, vi. 317.
  - several charges, xiii. 62, 63.
- INDIRECT EVIDENCE. *See* Evidence.
- INDIVIDUAL, i. 65.
- INDORSATION—
- backing a warrant, i. 369-371.
  - of bill of exchange, i. 92.
  - of cheque, ii. 411. *See* Bill of Lading.
- INDUCIAE—
- inducia of citation, iii. 25, 27, 35; vi. 321.
  - bankruptcy proceedings, vi. 322.
  - in criminal proceedings, iii. 38; vi. 322.
  - petitions, ix. 262.
- INDUSTRIAL FRUITS, vi. 91.
- INDUSTRIAL AND PROVIDENT SOCIETIES, vi. 322. *See* Friendly Societies.
- building societies.
  - banking, vi. 323.
  - incorporation, vi. 323.
  - remedy for debts from members, vi. 323.
  - exemption from income tax, vi. 299, 323.
  - register as evidence, vi. 323.
  - contracts, vi. 323.
  - investments and execution of deeds, vi. 324.
  - liability of members in winding-up, vi. 324.
- INDUSTRIAL SCHOOLS, iv. 379.
- detention in, iii. 285.
- INEBRIATES, iv. 359; xiii. 244. *See* Drunkard.
- certified reformatories for, xiii. 245.
  - criminal habitual drunkards, xiii. 245.
  - retreats for, xiii. 244.
  - State reformatories for, xiii. 245.
- INFAMOUS. *See* Witness.
- INFANT, vi. 324. *See* Age; Children; Pupil; Tutor; Guardianship of Infants Act.
- cannot commit crime, x. 3.
  - life, protection of, x. 60, 76.
- INFECTIOUS DISEASES—
- common lodging-houses and inns, iii. 135; vi. 366.
  - in factory or workshop, v. 213.
  - prevention and mitigation of, x. 98.
- INFECTIOUS DISEASE NOTIFICATION ACT, viii. 319; x. 116.
- INFECTION, vi. 324. *See* Registration.
- absolute disposition, i. 18.
  - history of, iv. 253-298; v. 263-281.
  - base and public rights, ii. 36.
  - constructive, vi. 339.
  - direct registration, vi. 328.
  - ex propriis manibus*, vi. 338; xi. 87, 88.
  - real money burden, i. 230; ii. 242.
  - heritable security, ii. 181; xi. 141.
  - implies entry, iii. 190.
  - in terms of clause of direction, vi. 335.
  - notarial instrument, vi. 337; ix. 24-32.
  - operation of accretion, i. 47; vi. 340.
  - real rights without, ii. 15, 17; vi. 325.
  - results of non-, vi. 327.
  - specification of the property, vi. 334.
  - transmitted warrants, vi. 335.
  - warrants of registration, vi. 340.
  - where lands in several counties, xi. 120.
- INFERIOR COURTS. *See* Courts; Dean of Guild; Justice of the Peace Court; Police Court; Sheriff Court.
- INFIRM PERSONS—
- contributory negligence, iii. 271.
- INFORMER. *See* Confidential Communication; Witness.
- INFRINGEMENT—
- armorial bearings, i. 307.
  - of building restrictions, ii. 235.
  - of copyright, iii. 290-314.
  - of designs, iv. 217.
  - of patents, iv. 83; x. 202.
  - trade mark, iv. 83.
- INHABITANT OCCUPIER—
- franchise, vi. 49.
- INHABITED HOUSE DUTY, vi. 341.
- course of legislation, vi. 342.
  - administration, vi. 342.
  - subjects and rules of charge, vi. 342-348, 365.

**INHABITED HOUSE DUTY**—*continued.*  
ascertainment of annual value, vi. 350.  
collection, vi. 350.  
rates of duty, vi. 348.  
the assessment, vi. 349.

**INHIBITION**, iv. 233; vi. 351; viii. 125.  
procedure, v. 140; vi. 351.  
minute of renewal, xi. 116.  
subjects affected, vi. 353.  
effects of, vi. 139, 191, 353; vii. 333.  
extinction, recall, etc., vi. 356; x. 222.  
effect of sequestration on, xi. 206.  
ranking in sequestration, xi. 222.  
depending action, iv. 198.  
against bondholders, xi. 121.  
against grantor of absolute disposition, xi. 122.  
prescription, x. 130.  
register of, xi. 111, 112, 114–118.  
rights of child to inhibit, vii. 246.  
searches for, xi. 120.  
sleeping process, xiii. 145.  
abuse of civil process, iii. 44.  
of a wife, vi. 358; ix. 379.  
of teinds, vi. 358.

**INITIALS**, iv. 136; vii. 2.  
forgery of, vi. 39.  
royal, i. 313.

**INJURY**, vi. 359. *See Culpa; Damages.*  
*actio personalis moritur cum persona*, i. 65.  
by carelessness, i. 328.

**INLAND REVENUE**—  
Commissioners, vi. 263–266, 342. *See Income Tax.*  
confidential communications, xiv. 20.  
holidays, vi. 221.

**INNER HOUSE**, vi. 359. *See Court of Session.*

**INNKEEPER**, vi. 360; viii. 400.  
game, vi. 366; viii. 46.  
infectious diseases, vi. 366.  
lien, viii. 79.  
male servants, vi. 366.  
triennial prescription, xii. 314.

**INNOMINATE RIGHTS**, vi. 366. *See Servitudes.*

**INNUENDO IN SLANDER**, iv. 149.

**INQUEST**, vii. 1. *See Brieve; Jury Trial.*

**INQUIRY**—  
Private Legislation Procedure (Scotland) Act, 1899, xiv. 68.

**INQUIRIES**—  
as to character or credit, vi. 150.  
fatal accidents, v. 251.

**IN RE MERCATORIA WRITINGS**, vi. 148, 149; vii. 2.

**IN RETENTIS**, i. 12; iii. 112. *See Deposition.*

**IN RIXA**—  
casual homicide, ii. 307.

**INSANE PERSONS**—  
arrestments in hands of tutor, i. 315.  
connection with insane woman, i. 138; iii. 377. *See Curator bonis; Insanity.*  
*curator ad litem* to, iv. 45.  
custody of, i. 172; xiii. 27.  
franchise, vi. 51.  
incapable of consenting, iii. 213.  
legacies by, vii. 371.  
naval prisoners, xiii. 262.  
nullity of marriage, viii. 247.  
partnership, ix. 154.  
powers—  
Board of Lunacy, viii. 169.  
property of, viii. 168.  
reception and detention of, viii. 169.  
savings bank deposits, xi. 90.  
Stamp Acts, xi. 445.  
title to defend, xii. 269, 280.  
tutor or curator at law to, xiii. 26.

**INSANITY**, vii. 3.  
brieve from Chancery, ii. 222.  
civil incapacity, vii. 3.  
what constitutes legal, vii. 3.  
criminal responsibility, vii. 4; xiii. 60.  
as a plea in bar of trial, ii. 31; vii. 4.  
defence, vii. 5.

election by representatives, xii. 106.  
reduction of will on ground of, xii. 92.  
settlement of insane paupers, xi. 303.  
witnesses, vii. 5.

**INSCRIPTION ON TOMBSTONES**, ii. 191.

**INSOLENCE OF APPRENTICE**, i. 290.

**INSOLVENCY**, vii. 5. *See Bankruptey.*  
gratuitous alienations, vii. 7.  
constructive fraud, vii. 7.  
non-onerosity, vii. 8.  
debtor, vii. 9.  
title to challenge, vii. 10.  
form of challenge, vii. 10.  
fraudulent preferences, vii. 11.  
preferences challengeable, vii. 11.  
nature of fraud, vii. 11.

INSOLVENCY—*continued.*

fraudulent preferences—*continued.*  
transactions exempted from challenge,  
vii. 11.  
gratuitous alienations Act, 1621, vii.  
12.  
conjunct and confident persons, iii. 204 ;  
vii. 14.  
non-onerosity of transaction challenged,  
vii. 15.  
kinds of onerosity, vii. 16.  
debtor, vii. 17.  
title to challenge, vii. 18.  
form and effects of challenge, vii. 18.  
alienations in defraud of diligence, vii. 20.

INSPECTION OF GOODS. *See* Sale.

## INSPECTORS—

Contagious Diseases (Animals), iii. 248,  
249.  
Factory and Workshop Acts, v. 212-247.  
of common lodging-houses, iii. 135, 136.  
of mines, iii. 72.  
of chemical works, etc., i. 206.  
of poor—  
parish council, ix. 115.

INSTALMENT PAYMENT, ii. 77 ; vii.  
21.

## INSTIGATION, i. 27.

## INSTITOR, vii. 21.

INSTITUTE, vii. 22 ; xii. 60. *See* Sub-  
stitute.

*conditio si sine liberis*, iii. 172.  
conditional, vii. 22, 382 ; xii. 34, 35, 36,  
111.  
legacies, vii. 382.  
vesting, xiii. 91.  
conquest, iii. 212.  
creditors of, xii. 57.

INSTRUMENTARY WITNESSES, iv. 135.  
*See* Deeds (Execution of) ; Forgery.

interested, vii. 35.

INSTRUMENTS. *See* Infestment; Notarial  
Instrument ; Negotiable Instruments ;  
Resignation ; etc.

of evidence, v. 107.

## INSUCKEN MULTURES, vii. 23.

## INSULA NATA, i. 211, 368.

INSURANCE. *See* Accident, Fire, Life,  
and Marine Insurance ; Broker.

*bona fides* in contracts of, ii. 164 ; x. 308.

expiry of, xii. 265.

risk, x. 350.

INSURANCE—*continued.*

companies, vii. 102.  
income tax, vi. 290-292.  
title to sue, xii. 274, 275.

## INTENTION—

of testator, xii. 98.  
sale of goods, xi. 36, 38.

## INTERDICT, vii. 24.

procedure in, vii. 27.  
abuse of civil process, iii. 40.  
appeal to Circuit Court, i. 256.  
appeal to Court of Session, i. 259.  
appeal to Sheriff, i. 278.  
arbitrations, i. 304.  
breach of, ii. 208 ; ix. 225.  
consent of prosecutor, iii. 166.  
witnesses, xiii. 208.  
Burgh Court, vii. 28.  
by holder of office, ix. 93.  
defamatory documents, iv. 153.  
execution of, v. 140.  
*ex facie* absolute disposition, sale under,  
ix. 377.  
infringement of copyright, iii. 299, 304,  
306-308.

inhibition, vi. 356.

interim, vii. 27.

notice of, ii. 209.

nuisance, ix. 45.

patent, infringement of, i. 332 ; ix. 220.

possessory judgment, ix. 363.

seats in churches, xi. 129.

sequestration for rent, vi. 248.

Sheriff Court, vii. 28 ; xi. 312.

stoppage *in transitu*, xii. 28.

support to land, xii. 189.

title to sue, xii. 279.

waste by tercer, xii. 244.

## INTERDICTION—

judicial, vii. 30.

voluntary, vii. 30.

publication of, xi. 116.

prescription, xi. 116.

INTEREST, vii. 32. *See* Third Party ;  
Law Agent ; Notary Public.

disqualification, vii. 35.

arbiter, vii. 35.

instrumentary witness, vii. 35.

notary public or law agent, vii. 35.

witness, vii. 35.

matter of process, vii. 32.

*dominus litis*, iv. 330.

INTEREST—*continued.*  
 matter of process—*continued.*  
 defender, vii. 33.  
 pursuer, vii. 32.  
 property and possession of subjects  
 separated, vii. 34.  
 actions by third parties, vii. 34.  
 sequestration proceedings, vii. 35.  
 to enforce condition of feu-right, vii.  
 34.  
 maritime, ii. 197.  
 interest of money, vii. 36.  
 agent's disbursements, x. 18.  
 Apportionment Act, i. 284.  
 arrestment of, i. 313, 314.  
*bond fide* possessor's right to, ii. 159.  
 compound, vii. 38.  
 on bank overdrafts, i. 386.  
 on bills of exchange, ii. 82, 105, 106.  
 on calls made by liquidator, vii. 164.  
 on estate duty, v. 106.  
 on improper investments, xii. 121.  
 on feu-duty, v. 294.  
 on income tax, vi. 286, 295, 297, 298.  
 on inventory duty, vii. 60.  
 on *jus relictæ, jus relictæ*, xiii. 68.  
 on legacies, vii. 390; xii. 121.  
 on legacy duty, viii. 7.  
 on legitim, xii. 121.  
 on price of goods, xi. 51, 52.  
 on savings bank deposits, xi. 90, 91, 92.  
 on succession duties, viii. 19.  
 payable by and to judicial factor, vii.  
 184, 185.  
 poinding of the ground for, ix. 301,  
 302.  
 rate, vii. 39.  
 simple, vii. 36.  
 under bond, ii. 167.

INTERIM—  
 appointments—  
 procurator-fiscal, x. 58.  
 prosecutor, x. 63.  
 town clerk, xii. 283.  
 awards, i. 301.  
 decree, iv. 124; vii. 39.  
 execution, vii. 39.  
 interdict, vii. 26.  
 liberation, i. 265, 275.  
 possession, vii. 39, 40.

INTERLINEATIONS, iv. 131, 136.  
 in wills, xii. 91; xiii. 195, 197.

INTERLOCUTOR, vii. 40; x. 230. *See*  
 Decree; Reclaiming Note.  
 abandonment of action, v. 1, 3.  
 Bill Chamber, xii. 215.  
 certified copy, ii. 357.  
 error in, iii. 52; i. 2, 3.  
 final judgment, v. 328.  
 interim execution, vii. 40.  
 lost, x. 80.  
 ordering issues, vii. 75.  
 reponing against, x. 305.  
 when extract unnecessary, v. 195.

INTERLOCUTORY DECREE, iv. 124.

INTERLOCUTORY JUDGMENT, vii. 40.

INTERNATIONAL COPYRIGHT, iii.  
 312.

INTERNATIONAL LAW, vii. 42, 306.  
 cartel, ii. 305.  
*comity, comitas*, iii. 102.  
*occupatio*, ix. 88.  
*postliminium*, ix. 365.  
 reprisal, x. 309.

INTERNATIONAL PRIVATE LAW, vii.  
 43; xiv. 40.  
 cautionary obligations, ii. 349.  
 domicile, xii. 134–136.  
 jurisdiction, xii. 134–136.  
 legacies, vii. 408.  
 legitimation, viii. 33.  
 prescription of bills, ii. 121.  
 marriage, viii. 267.  
 partnership, ix. 155.  
 prescription, ix. 408.  
 securities, vi. 190.  
 succession, xii. 134–136.

INTERPRETATION; INTERPRETA-  
 TION ACTS, xii. 7.  
 clause, xii. 7.  
 of expressions by usage, ix. 146.  
 of contracts, ix. 82.  
 of wills, vii. 397–400.  
 of words in will, xii. 98–101, 112–117.

INTERPRETER—  
 to prisoner, iv. 118.  
 to witnesses, xiii. 207, 214.

INTERROGATORIES, vii. 47. *See* Com-  
 mission; Evidence.

INTERRUPTION—  
 of prescription, ix. 407.  
 execution, v. 140.  
 of right of way, x. 344.

INTERSECTED LANDS, vii. 295.

**INTER VIRUM ET UXOREM DONATIO**,  
iv. 336. *See* Donation; Husband and Wife.

**INTESTATE SUCCESSION**—

heritable, xii. 44; xiii. 69, 70.  
moveable, xii. 74; xiii. 69. *See* Succession.  
failure of provisions, vii. 368; xiii. 105, 106.

**INTIMATION**—

bond and disposition in security, i. 335.  
consignation, iii. 218.  
edictal, i. 335.  
*jus quæsitum tertio*, vii. 256.  
of petition, ix. 262.  
of resignation of trustees, x. 319, 320; xii. 186.  
of summons of augmentation, i. 357, 358.  
of assignations and discharges, ii. 173.  
of assignations and transfer, i. 334; ii. 9; vii. 48. *See* Securities; Service.  
after sequestration, xi. 158, 204.  
of endorsement of delivery order, xi. 157.  
of I.O.U.'s, ix. 12.  
of *jus crediti*, vii. 247.  
of life policies, viii. 103; xi. 151.  
of share of partnership, ix. 159; xi. 148.  
of trade fixtures, xi. 146.  
of transfer of shares, ii. 148.  
of transference of goods in warehouse, xi. 146.  
should be served on tutors, x. 122; xiii. 16.  
to debtor abroad, xii. 186.  
to tenants, viii. 185.  
where unnecessary, i. 336.

**INTIMIDATION**—

master and servant, viii. 310.  
of witnesses, xiv. 21.

**INTOXICATING LIQUORS**—

sale to children of, xiv. 40.  
**INTOXICATION**, vii. 48. *See* Drunkard.  
criminal law, vii. 50.  
no defence to crime, iii. 375.

**INTRANTS**—

Faculty of Advocates, i. 143, 144.  
Writers to the Signet, xiii. 228.

**INTRINSIC**—

oath on reference, ix. 72.

**INTROMISSION**, vii. 51. *See* Vitious Intromission.  
adjudger, vii. 51.  
*gestio pro hærcde*, ix. 188.  
heritable creditor, vii. 51.  
on more than one title, vii. 52.

**INTRUSION**, iv. 385.

**INVECTA ET ILLATA**, vi. 243; xii. 252.

**INVENTIONS**. *See* Patent.

**INVENTORY**, vii. 52.

service *cum beneficio inventarii*, vii. 52.  
tutorial or curatorial, ii. 18, 26; vii. 52; xiii. 2, 8, 9.  
personal estate, i. 133; iii. 193-196; vii. 53, 56-65.  
confirmation must contain, xiv. 30.  
oath to, ix. 60; xiv. 31.  
of process, viii. 153.

**INVENTORY DUTY**, vii. 56. *See* Estate Duty.

valuation for, i. 285; vii. 53.

**INVERNESS BOUNDARIES**, xi. 120.

**INVESTIGATIONS**. *See* Notice of Accident Act.

**INVESTITURE**. *See* Infeftment.

writ of, xii. 157.

**INVESTMENTS**—

by curator, iv. 35.  
by industrial and provident societies, vi. 324.  
by judicial factor, i. 40; vii. 179.  
by trustees of savings banks, xi. 89.  
entailed money, xii. 380.  
surrogatum, xii. 201.  
trust, xii. 371-382.  
changing trust, xii. 356.  
trustee's duty to invest, xii. 357.  
tutor's failure to invest, xiii. 12.  
tutors-nominate realising, xiii. 12.

**INVOICE**, vii. 65.

I.O.U., vii. 66; viii. 130; xi. 140.  
essentials, vii. 67.  
non-essentials, vii. 67.  
non-negotiable, vii. 67; ix. 12.  
stamp duty, vii. 67.  
testamentary, xiv. 74.

**IRELAND**—

backing a warrant, i. 370. *See* Abroad.  
Court of Probate, iii. 196; vii. 57.  
Judgment Extension Act, vii. 169.  
no volunteers, xiii. 137.  
poor law, ix. 342.

IRELAND—*continued.*

removal of panper to, ix. 342.  
yeomanry, xiii. 230.

## IRRELEVANCY, iv. 156.

## IRRITANCES, LEGAL AND CONVENTIONAL, v. 294; vii. 67; xii. 178, 179.

conventional, vii. 72.  
how enforced, vii. 73.  
cannot be purged, vii. 73.  
legal, vii. 68.

how enforced, vii. 72.

IRRITANT AND RESOLUTIVE CLAUSES, vii. 74. *See Irritancies.*

real money burdens, ii. 241.

## ISH AND ENTRY, vii. 75.

"ISSUE," vii. 75. *See Bairns.*  
meaning, xii. 116.

of bastard, ii. 41.

ISSUES, vii. 75. *See Jury Trial.*

interlocutor ordering, vii. 75.

approval, i. 263; vii. 76.

varying issue, vii. 76.

counter issue, iv. 152; vii. 86.

lodging copies, vii. 76.

pursuer, vii. 76.

reclaiming, vii. 76; x. 220.

proof under issue, vii. 77.

general issue, vii. 77.

where particular issue necessary, vii. 77.

schedule of damages, vii. 78.

plurality of parties, vii. 79.

forms—

apprehension, vii. 81.

breach of promise and seduction, vii. 82.

diligence, vii. 82.

false statement inducing hatred, vii. 85.

holding up to hatred, vii. 85.

nuisance, vii. 84.

prescriptive rights, vii. 84.

reduction of deeds, vii. 83.

slander, iv. 152; vii. 84.

*veritas*, vii. 86.

wrongful invasion of rights, vii. 80.

ITER, vii. 87. *See Actus; Via.*JAILS, x. 28. *See Prisons.*

## JUDGE AND WARRANT, ii. 252; iv. 95; vii. 88; xi. 124.

JETTISON OF CARGO, i. 363. *See Average; Adjustment; Marine Insurance.*

## JEWS, vii. 89.

employment of, v. 225.  
parliamentary elections, ix. 134.

JOBBER, vii. 91. *See Broker; Agency; Stockbroker.*JOINT ADVENTURE, vii. 92; ix. 169.  
*See Partnership.*

bequest, xii. 111.

defences, iv. 156.

delinquents, iii. 78.

penalties (statutory), ix. 251.

committee, vii. 95.

county council, vii. 95.

parish council, vii. 96.

Rivers Pollution Prevention Act, vii. 96.

roads and bridges, vii. 96.

quorum and proceedings, vii. 96.

obligations, iii. 209, 286; x. 69. *See Conjunctly and Severally; Co-obligant.*

JOINT STOCK COMPANIES, vii. 97. *See Companies.*JOINT AND SEVERAL RIGHTS, vii. 93. *See Club; Gable; Common Interest; Common Property; Commonty; Executors; Joint Adventure; Partnership; Trust; Title to Sue; Conjunct Right; Liferent and Fee.*

## JOINT AND SEVERAL LEGACIES, vii. 383.

## JOINTURE, vii. 168.

infektment, vii. 168.

## JOURNALS OF PARLIAMENT, vii. 168.

## JUDGE—

*ad vitam aut culpam*, i. 140.

Advocate-General, vii. 169.

amand, i. 211.

as arbiter, i. 295.

as witness, xiii. 213.

assessor to, i. 332.

barratry of, ii. 34.

beating and defaming, ii. 45.

Bill Chamber, ii. 69-72.

bill of exceptions, ii. 73.

books of sederunt, ii. 193.

bribery of, ii. 218.

buying of pleas, ii. 273; xi. 10.

corruption, malice, or oppression of, i. 257; ix. 320.

declinature of, iv. 122.

disqualification of, vii. 35.

examination of *locus*, v. 108.

**JUDGE—continued.**

false accusations against, i. 50.  
incompetency, i. 257.  
jury trial, i. 263 ; vii. 239.  
notes by, vii. 169 ; xiii. 215.  
proof on view, xiii. 121.  
threatening, xii. 259.  
wilful deviation, i. 257.  
consultation of, iii. 242.  
Court of Session, iii. 393 ; xi. 291.  
Justiciary, vii. 270.

**JUDGMENT**, iv. 124 ; vi. 40. *See Decree ; Interlocutor.*

Appeal Circuit Court, i. 254.  
appeals, Quarter Sessions, i. 276.  
certificate of, ii. 355.  
clerical error in, iii. 52.  
conviction, summary, iii. 281.  
Debts Recovery Court, iv. 114.  
final, v. 328.  
interlocutory, vii. 40.  
possessory, ix. 362.  
Small Debt Court, xi. 355.  
summary prosecutions, iii. 389.  
under Licensing Acts, viii. 71.  
Extension Acts, vii. 169.  
    Bill Chamber, ii. 70.

**JUDICATUM SOLVI, CAUTION**, ii. 351.**JUDICIAL ASSIGNNATIONS**, i. 336.

caution. *See Caution (Judicial).*  
Committee of Privy Council, x. 49.  
examination, v. 116. *See Declaration  
by a Prisoner.*  
expenses. *See Expenses.*

**JUDICIAL FACTOR**, vii. 173. *See Curator ; Curator ad litem ; Tutor.*

appointment, reclaiming note, x. 22.  
annual audit, i. 40.  
arrestments, i. 315.  
as executor-dative, v. 142.  
as executor-nominate, xii. 350.  
*auctor in rem suam*, i. 352 ; xii. 361.  
bank account, iv. 112.  
common property, iii. 137.  
exoneration and discharge, i. 41 ; iv. 112 ;  
    v. 155 ; vii. 194, 214.

fees, i. 41.

*Gazette* notices, iv. 110.

heritable securities, xii. 363.

heritage in England, vii. 189.

investments, i. 40.

lien, xi. 182.

**JUDICIAL FACTOR—continued.**

making election, vii. 190.  
petition for special powers, i. 40.  
power of appointment, i. 282.  
power to compromise, iii. 163.  
removing tenants, xii. 234.  
Sheriff Court, xi. 311.  
report by accountant, i. 40.  
trustees' powers not transmissible to,  
    xii. 365.

*curator bonis* to minor, vii. 197.  
    appointment, vii. 197.  
    powers and duties, vii. 198.  
    termination of office, vii. 199.

*curator bonis* to incapax, vii. 199 ; xiv.

44.

    appointment, vii. 200 ; xiv. 44.  
    powers, vii. 202.  
    special powers, vii. 202.  
    termination of office, vii. 204.  
deceased debtor's estate, iv. 109, 110.  
*factor loco tutoris*, vii. 174 ; xiii. 2.  
    appointment, ii. 71 ; vii. 174.  
    to whom, vii. 174.  
    when necessary, vii. 174 ; xiii. 22, 25.  
parties eligible, vii. 176.

petitioners and respondents, vii. 177.  
powers, vii. 178.

recovery of estate, vii. 178.

realisation and investment, vii. 179.

management, vii. 180.

title to sue, vii. 182.

aliment of pupil, vii. 182.

custody of pupil, iv. 53.

accounting, i. 40 ; vii. 183.

penalties, vii. 185.

special powers, vii. 186–192.

termination of office, vii. 192 ; xiii. 21.

caution, vii. 195.

procedure and expenses, vii. 196.

*factor loco absensis*, vii. 204.

    appointment, vii. 204.

    powers and duties, vii. 206.

    termination of office, vii. 206.

railways, x. 167.

trust and intestate estates—

    appointment intestate estate, vii. 209.

    who may be appointed, vii. 211.

    who may apply for, vii. 210.

    circumstances where appointed, vii. 207.

    completion of title, vii. 214.

    powers, vii. 212.

**JUDICIAL FACTOR—continued.**

trust and intestate estates—*continued*.  
 discharge, vii. 214.  
 recall of appointment, vii. 214.  
 mandatory, viii. 195.  
 notice (or cognizance), vii. 215.  
 procedure. *See Process*.  
 reference, i. 304. *See Arbitration*.  
 remit, x. 277.  
 sales, xi. 15. *See Sale*.

**JUDICIAL SEPARATION**, vii. 215.

action by curator, xii. 277.  
 aliment before and after decree, i. 200,  
 201.  
 condonation of cruelty, vii. 217.  
 custody of children, iv. 53.  
 effects of decree, vii. 217.  
 grounds, i. 138; vii. 215–217.

**JURAT**, i. 155.**JURATORY CAUTION**, ii. 350.**JURISDICTION**, vii. 218.

Admiralty, xi. 99.  
 affidavits, i. 155.  
 ambassador, i. 212.  
 bankruptcy, vii. 225.  
 Bill Chamber, ii. 70.  
 Circuit Court, Civil, i. 255.  
 Circuit Court, Criminal, i. 248; iii. 20.  
 Court of Session, ix. 257; xi. 292–295;  
 xiv. 44.  
 criminal, vii. 229, 248, 267, 270–272.  
 British ships, xiii. 242.  
 plea in bar of trial, ii. 31.  
 summary prosecutions, iii. 386.  
 Dean of Guild Court, iv. 93; vii. 89.  
 delegated, iv. 170.  
 divorce, vii. 224.  
 co-defender, iii. 78; iv. 310.  
 foreign ships, xi. 98.  
 friendly societies, vi. 82.  
 international law, xii. 134–136.  
 Justice of Peace Court, xii. 151.  
 Lyon King at Arms, i. 308; viii. 178.  
 personal actions, i. 202; vii. 219.  
 arrestment of debtor's person, vii. 223.  
 heritable property, vii. 221; xi. 318.  
 moveable property arrested, i. 321; vii.  
 222.  
 personal presence, vii. 221.  
 residence, vii. 219; xi. 316.  
 Police Court, ix. 312.  
 prorogation, vii. 229; xi. 318.

**JURISDICTION—continued.**

railways, x. 173.  
 real actions, vii. 223; xi. 287.  
 reconvention, vii. 228; xi. 319; xii. 346.  
 sea, xi. 97.  
 Sheriff Court, ix. 257; xi. 308–320; xiv.  
 77.  
 Small Debt Court, xi. 350.  
 stipendiary magistrates, xii. 15.  
 succession and administration, vii. 227.  
 trustees, xii. 344, 346, 372.  
 trustees, foreign, xii. 344, 345.  
 trade unions, xii. 293, 294.  
 warrant to arrest beyond, i. 369–371;  
 xiii. 159, 160, 161.  
 winding-up companies, vii. 226.

**JURISPRUDENCE**, vii. 231. *See Law* ; *International Law*.

medical, viii. 315.

**JURORS, AS WITNESSES**, xiii. 213.

challenge of, ii. 379.

at enmity with panel, v. 26.

confidential communications, iii. 185.

dentists as, xiii. 253.

military officers as, i. 309.

oath of, ix. 60.

qualification of, iii. 31.

peer exempt, ix. 241.

**JURY TRIAL**, i. 263; vii. 232. *See Issues* ; *Bill of Exceptions*.

origin and constitution, vii. 232.

special, vii. 234.

what cases are tried, vii. 234.

time and place, vii. 235.

notice of trial, vii. 236.

postponement, vii. 237.

abandonment, i. 2; vii. 237.

procedure prior to, vii. 237.

proceedings at, vii. 238.

exceptions, ii. 72; vii. 238; xi. 291.

production of documents, vii. 238.

notes of evidence, vii. 239.

judge's charge, vii. 239.

verdict, vii. 239.

verdict, extract of, v. 195.

appeals for, i. 262; vii. 240; xii. 300.

Circuit Courts, vii. 240.

new trial, ix. 16; xiv. 45.

failure to pay expenses, i. 2.

fees to counsel, v. 176.

criminal prosecution, iii. 278, 380.

*JUS ACCRESCENDI*, i. 46.

- JUS AD REM*, vii. 250.  
*JUS CREDITI*, vii. 242.  
 essentials of a proper, vii. 242.  
 provisions to wife, vii. 242.  
 provisions to children—  
   not conferred, vii. 243 ; xii. 71-73, 98.  
   conferred, vii. 244 ; xii. 71-73, 98.  
 reserved powers of husband and father, vii. 245.  
 protection not extended beyond issue of marriage, vii. 246.  
 diligence against father, vii. 246 ; xii. 98.  
 vests without service, vii. 247.  
 quality as regards succession, vii. 247.  
 to partnership rights, assignation, xi. 148.  
 to lands assignation, iv. 296.
- JUS DELIBERANDI*, i. 237, 243 ; vii. 248 ; xii. 51.
- JUS DEVOLUTUM*, vii. 248.
- JUS IN RE*, vii. 251.
- JUS MARITI*, vii. 250 ; viii. 273, 274, 295, 296, 301-305 ; ix. 108, 237. *See Administration* ; Husband's Right of.
- JUS QUÆSITUM TERTIO*, vii. 251.
- JUS RELICTÆ*, iv. 312 ; vi. 182 ; viii. 271 ; xii. 81, 242 ; xiii. 68.  
 change of domicile, xiv. 45.  
 deeds in fraud of, vii. 258.
- JUS RELICTI*, vi. 182 ; xiii. 68 ; xiv. 45.
- JUS TERTII*, vii. 259.
- JUSTICE-CLERK, LORD**, vii. 261.
- JUSTICE, COLLEGE OF**, iii. 93.
- JUSTICE - GENERAL, LORD**, vii. 262, 263.
- JUSTICE OF THE PEACE**, vii. 263 ; xiv. 45.  
 history, vii. 263.  
 commission, vii. 263.  
 appointment of and endurance of commission, vii. 265, 266.  
 qualification, vii. 265.  
 acceptance, vii. 266.  
 bankruptcy of, xi. 252.  
 powers and duties, vii. 266.  
 criminal jurisdiction, vii. 267.  
 territorial jurisdiction, vii. 268.  
 procedure, vii. 268.  
 review, vii. 269.  
 remuneration, vii. 269.  
 responsibility, vii. 269.
- JUSTICE OF THE PEACE—continued.**  
 Small Debt Court, x. 62 ; xi. 361 ; xii. 151.  
 Quarter Sessions, i. 273 ; xi. 295.
- JUSTICIAIRY, CLERK OF**, iii. 53.
- JUSTICIAIRY, HIGH COURT OF**, vii. 270.  
*See Circuit Courts.*
- judges, vii. 270.  
 sittings, vii. 270.  
 quorum, etc., vii. 270.  
 jurisdiction, i. 152, 264, 373 ; vii. 270.  
 offences at sea, vii. 271.  
 exclusive, iii. 385 ; vii. 272.  
 books of adjournal, ii. 192.  
 criminal letters, iii. 378.  
 indictments, iii. 378.  
 warrants by, i. 369-371.  
 extracts, v. 196.
- JUSTIFIABLE HOMICIDE**, vii. 272. *See Homicide.*
- JUVENILE OFFENDERS**, i. 163, 297 ; iii. 374, 377.  
 reformatory schools, iv. 379.  
 whipping, xiii. 189.
- KAIN**, vii. 273.
- KEEPER—**  
 of Holyrood House, i. 377 ; xi. 86, 87.  
 of the Signet, xiii. 227.
- KENNING TO TERCE**, vii. 273 ; xii. 50, 243 ; xiii. 68.
- KIN, KINDRED**, iv. 163.
- KING**. *See Sovereign.*
- KING'S ADVOCATE**. *See Lord Advocate.*
- KING'S COUNSEL**, x. 127.
- KING'S EVIDENCE**, x. 128.
- KING'S ANNUITY**, i. 236.
- KING'S REMEMBRANCER**, x. 128.
- KING OF ARMS, LYON**, viii. 176.
- KINSHIP, DEGREES OF**, iv. 163.  
 table of degrees of, iv. 165.
- KIRK**. *See Church.*
- KIRK SESSION**. *See Church Courts.*
- KIRK OR MARKET**. *See Deathbed.*
- KIRKYARD**. *See Burying-Place.*
- KNAVESHIP**, vii. 278.
- LABES REALIS**, xiii. 128.
- LADING, BILL OF**, *See Bill of Lading.*
- LÆSIO ULTRA DIMIDIUM**, or  
*LÆSIO ENORMIS*, vii. 278.
- LAKES**, viii. 137.

- LAIR. *See* Burying-Place.
- LAMPS, LIGHTING, xii. 262.
- LANARK—  
boundaries, xi. 120.
- LANARKSHIRE SHERIFF COURT, i. 15.
- LANDED MEN. *See* Jury.
- LANDLORD AND TENANT. *See* Leases; Sequestration; Agricultural Holdings; Crofters' Holdings; Removing; arage, i. 296.
- county assessments, x. 197.
- damage by game, vi. 106, 147.
- desertion by tenant, iv. 212.
- ejection of tenant, iv. 384.
- fences, v. 257-259.
- fencing of machinery, v. 218.
- fixtures, vi. 28.
- Ground Game Act, vi. 145.
- income tax, vi. 273-275, 281-285.
- inhabited house duty, vi. 341.
- injury by another tenant, vii. 338.
- landlord—  
hypothec, vi. 138, 243-246; ix. 53, 56.
- liability for tenant, iv. 22.
- right to hunt, i. 226; vi. 105, 106.
- title to sue, xii. 272, 279.
- Lands Clauses Acts, vii. 296.
- mails and duties, viii. 181.
- nuisance, iv. 161; ix. 45.
- parts and pertinents, ix. 184.
- peacewarning tenant, xii. 263.
- pointing of ground by heritable creditor, ix. 300.
- prescription, ix. 401.
- removal terms, xii. 244.
- removing tenant, xii. 233-237, 361.
- renunciation of lease, x. 5.
- retention between, x. 335.
- rights and obligations, vii. 335-349.
- singular successors, xi. 342.
- tenant—  
night poaching, ix. 287.
- access to lands for crop, iv. 1.
- franchise, vi. 49.
- kindly rentallers of Lochmaben, xii. 237.
- funeral expenses, vi. 248.
- right to destroy rabbits, x. 130.
- right to will lease, xii. 74.
- seats in churches, xi. 128.
- timber, xii. 260.
- LANDLORD AND TENANT—*continued.*
- title to remove tenant, xii. 234, 237.
- trade fixtures, x. 333; xi. 146.
- vermin, xiii. 63.
- widow's terce, xii. 49, 243; xiii. 69.
- LAND TAX OR CESS, iv. 109; vii. 279.
- in burghs, vii. 281.
- in counties, vii. 280.
- redemption, v. 44; vii. 281.
- railways, x. 168, 171.
- LANDS—  
Crown, iv. 10.
- description of, v. 285-290.
- planting and enclosing of, ix. 272.
- LANDS CLAUSES ACTS, vii. 282.
- purchase by agreement, vii. 283.
- purchase otherwise than agreement, vii. 286.
- compulsory taking, vii. 286.
- how compulsory powers set in motion, vii. 287.
- how price ascertained, vii. 288.
- arbitration, i. 304; vii. 288.
- jury trial, xii. 289.
- valuation in case of absent parties, vii. 290.
- application of compensation, vii. 291.
- conveyances, vii. 293.
- entry on lands, vii. 293.
- part of a house, vii. 294.
- intersected land, vii. 295.
- common lands, vii. 295.
- lands subject to heritable burdens, vii. 296.
- lands subject to feu-duty, etc., vii. 296.
- lands under lease, vii. 296.
- interests omitted to be purchased, vii. 297.
- superfluous lands, vii. 297.
- service of notices, etc., vii. 299.
- recovery of damages and penalties, vii. 299.
- allotments, i. 209.
- effect on succession, xii. 42.
- land tax, etc., x. 171.
- owner's estimate of value, x. 9.
- provisional order, x. 85.
- purchase by railways, x. 132, 135, 171.
- purchase from heir of entail, v. 45.
- purchase under Public Health Act, x. 109.
- sale by trustees, xii. 367.
- sale by tutors, xiii. 20.

LANDS CLAUSES ACTS—*continued.*

taxation of expenses, xii. 225.  
tender, xii. 240.

LANDS VALUATION APPEAL COURT,  
vii. 300.

appellants, vii. 300.  
form of case stated, vii. 300; x. 180.  
amendment of case, vii. 301.  
expenses, vii. 301; x. 180.

## LANDS, VALUATION OF, x. 176.

LANDWARD COMMITTEE. *See* Parish  
Council.

## LAPSED TRUST, xii. 396.

LAST HEIR, vii. 302. *See* Gift of Bastardy.

## LATENT DEFECT—

negligence, ix. 1.  
reparation, x. 290, 291, 293.

## LAUNDRIES, v. 214.

employment in, v. 225.

LAW, vii. 302. *See* By-law; Jurispru-  
dence.

administrative, vii. 305.

Aquilian, i. 293.

canon, ii. 285.

civil, iii. 39.

common, iii. 134.

constitutional, iii. 239; vii. 305.

consuetudinary, iii. 240.

criminal, vii. 303.

ecclesiastical, vii. 306.

findings in, v. 329.

foreign, vi. 33, 35.

ignorance of, vi. 252.

international, vii. 42, 306. *See* Inter-  
national Law.

martial, vii. 306; viii. 305, 332.

mercantile, vii. 306.

military, vii. 306; viii. 332.

municipal, vii. 306.

natural, vii. 306; viii. 400.

positive, vii. 306.

prize, x. 51.

## LAW AGENT, vii. 307; xiii. 289; xiv.

46. *See* Common Agent; Poor's Agent;  
Notary Public.

acting as banker, i. 388.

acting as trustee, i. 353; xii. 353.

action for expenses, xii. 223.

appointment or retainer, vii. 315.

as witness, xiii. 212, 213.

arrestment of client's funds, i. 316.

authority, vii. 315.

LAW AGENT—*continued.*

borrowing from trustees, i. 353.

certificate of licence to practise, vii. 313;  
xi. 430; xiv. 46.

*cessio bonorum*, ii. 368.

circumvention, iii. 24, 25.

claims in sequestration, xii. 355.

collusion, iii. 101.

complaint against, vii. 323; ix. 263;  
xiv. 46.

confidential communications, iii. 183.

contempt of Court, iii. 253.

disburser, v. 170; vi. 241; vii. 316;  
317.

disclamation, iv. 246.

disabilities, i. 3; v. 170; vii. 322.

interest on accounts, vii. 38.

interested party, vii. 35.

liabilities on contracts, iii. 162; v. 169;  
vi. 254; vii. 322.

liabilities to others than clients, iii. 42, 43;  
vii. 321; ix. 296; xii. 273, 274.

lien over clients' documents, vi. 241; vii.  
317; ix. 281; x. 19.

negligence, v. 170; ix. 3.

*pactum de quota litis*, ix. 105.

partnerships, clerks, etc., v. 178; vii.  
324.

preparation of account, v. 170.

preparing will, xiii. 201.

prescription, xii. 315.

privileges, v. 170; vii. 314.

professional liability to clients, vii. 319;  
x. 5.

qualification and admission, vii. 308;  
xi. 417; xiv. 46.

Court of Session, vii. 312.

examination in law, vii. 309; xiii. 289.

removing tenants, xii. 235.

remuneration, v. 169, 170; vii. 316;  
xii. 361, 362, 355.

right to proceed with action, vi. 242.

sale of heritage, xi. 7-9.

societies, vii. 325.

incorporated society of, vii. 325.

summary proceedings against, vii. 323.

tutor's acting as, xiii. 14.

unqualified practitioners, v. 170; vii.  
313.

will in favour of, xii. 92, 93.

## LAW APPRENTICE, vii. 308, 324.

## LAWBURROWS, vii. 326.

## LAW COURT STAMPS—

bankruptcy, i. 39.  
 factories, i. 41. *See* Fee-Fund Dues.  
**LAW OF THE FLAG.** *See* Flag.  
**LAY DAYS**, iv. 194.  
**LEASE**, vi. 195 ; vii. 328. *See* Accretion ; Agricultural Holdings Act ; Crofters' Holdings Act ; Hypothec.  
 constitution and requisites, vii. 329.  
 who may be parties, vii. 330.  
 firm, vii. 334 ; ix. 166, 172.  
 disponer absolute disposition, i. 24.  
 heir of entail, v. 46 ; vii. 332, 333.  
 who may be parties—  
   heritable creditor, ii. 176.  
   judicial factor, vii. 187, 189, 331, 332.  
   magistrates, iii. 130.  
   married women, vii. 331 ; ix. 378.  
   minors, vii. 332.  
   trustees, vii. 331 ; xii. 354, 361, 362, 364, 367.  
   tutors, vii. 332 ; xiii. 13, 14, 19, 20.  
 variations *re* granters and grantees, vii. 334.  
 variations *re* subject-matter, vii. 334.  
 of allotments, i. 209.  
 of clay, iii. 51.  
 of mineral, viii. 343 ; xi. 100.  
 of railways, x. 145.  
 of seats in churches, xi. 129.  
 of tramway, xiii. 280-289.  
 rights, obligations, and conditions, i. 206 ; vii. 335 ; ix. 363.  
 transmission of the, vii. 338.  
 termination of, vii. 339.  
 special conditions, provisions, etc., vii. 339.  
 building, vii. 349.  
 long, vii. 349.  
 legal irritancies, vii. 69.  
 warrandice, xiii. 153, 156.  
 registration, vii. 353-355 ; x. 255.  
 burgage, ii. 252.  
 searches against, xi. 119.  
 securities over, xi. 147.  
 poinding of the ground, ix. 300.  
 rating, x. 184.  
 assignation of, i. 338.  
 and sale, xi. 4, 5.  
 renunciation by tutor, xiii. 9.  
 renunciation by tutors nominate, xiii. 20.

LEASE—*continued.*

warrandice, xiii. 155-156.  
 Stamp Acts, xi. 445.  
 bequest of, i. 179, 185.  
*bond fide* possession, ii. 161.  
 copy as evidence, ii. 61.  
 diligence affecting proprietor's right to grant, vii. 333.  
 jurisdiction of Sheriff Court, xi. 311.  
 singular successors of lessor, xi. 342.  
**LEASING MAKING, OR LESE MAJESTY**, vii. 365.  
**LECTURES**—  
 copyright, iii. 300.  
 extra mural, xiii. 44.  
 university, xiii. 43.  
**LEGACIES**, vii. 366. *See* Alimentary Interest ; Appointment, Power of ; Bastard ; Beneficiary ; Charitable Trust ; Collation ; *Conditio si sine* ; Conjunct Rights ; Donation *mortis causā* ; Heir ; Heritable and Moveable ; Institute ; Residue ; Substitute ; Testament ; Will. definitions, vii. 366.  
 general, vii. 366 ; xii. 108.  
 special, v. 149 ; vii. 367 ; x. 342 ; xii. 108, 131.  
 double, xii. 118, 119, 121.  
 universal and residue, vii. 368 ; xii. 108.  
 demonstrative, vii. 368 ; xii. 109.  
*legatum liberationis*, vii. 369.  
*legatum rei alienæ*, vii. 369 ; xii. 109.  
 of heritage, vii. 369.  
 nuncupative, vii. 370 ; xii. 109, 88 ; xiii. 193.  
 abatement, vii. 371 ; xii. 109.  
 who can bequeath, vii. 371.  
 insane persons, vii. 371.  
 how granted, i. 135 ; vii. 372.  
 precatory trust, vii. 373 ; xii. 118.  
 mutual wills, vii. 375.  
 destinations in bonds, vii. 375 ; xiv. 74.  
 subject of the gift, vii. 376.  
*falsa demonstratio non nocet*, v. 249 ; vii. 377-379 ; xii. 113, 117.  
 heir of entail, vii. 378.  
 object of gift, vii. 378.  
 conditional institution and substitution, vii. 382 ; xii. 111.  
 joint and several—  
   survivorship and accretion, vii. 383 ; xii. 111, 112.

LEGACIES—*continued.*

revocation and ademption, vii. 385.  
 revocation, vii. 385; xiii. 198.  
 ademption, vii. 386.  
 by subsequent will, vii. 387.  
 payment, repetition, etc., vii. 388.  
 payment, vii. 388; xii. 119, 121, 358.  
 prescription, vii. 389; xii. 121.  
 repetition, vii. 189; xii. 120, 121.  
 interest payable, vii. 390; xii. 119, 121.  
 expenses, vii. 390.  
 can legatee sue testator's law agent, vii. 391.  
 currency in which payable, vii. 391.  
 conditions, accumulations, vii. 391; xii. 121, 122.  
 cumulative or in substitution, vii. 394.  
 satisfaction *debitor non præsumit donare*, vii. 396; xii. 122, 123.  
 extrinsic evidence, etc., vii. 397; ix. 148.  
 vesting, vii. 400; i. 234; xii. 116, 123; xiii. 74.  
 subject to defeasance, vii. 404.  
*quod fieri debet infectum valet*, vii. 406.  
 protected succession, vii. 407.  
 acceleration and anticipated payment, vii. 408.  
 international law, vii. 408.  
 assignation of, i. 334.  
 earmarked, xii. 36.  
 erroneous designation, vii. 378, 379; xii. 117.  
 of annuity, xii. 109.  
*surrogatum*, xii. 201.  
 to law agent, vii. 323.  
 to executor, xii. 122.  
 to society, xii. 114, 115.  
 to trustees, x. 318; xii. 122, 126.

## LEGACY AND SUCCESSION DUTIES, viii. 1.

legacy duty—  
 domicile, viii. 2.  
 subjects chargable, viii. 2.  
 legacies free of, viii. 5.  
 disclaimer by legatee, viii. 6.  
 charitable purposes, viii. 6.  
 exemptions, viii. 6.  
 rates of, viii. 7.  
 when payable, viii. 7.  
 interest and discount, viii. 7.  
 by whom payable, viii. 8.

LEGACY AND SUCCESSION DUTIES—*continued.*

legacy duty—*continued.*  
 on what amount payable, viii. 9.  
 method of charge, viii. 9.  
 method of payment, viii. 10.  
 proof of payment, viii. 10.  
 method of recovery, viii. 11.  
 overpaid, viii. 11.  
 compounding, viii. 11.  
 avoidance of administration, viii. 11.  
 passing accounts, viii. 11.  
 succession duty, viii. 12.  
 property subject to, viii. 12.  
 gifts duty free, viii. 12.  
 what is a succession? viii. 13.  
 successor and predeceaser, viii. 14.  
 dispositions with reservations of benefit, viii. 16.  
 insurance policies, etc., viii. 16.  
 transmitted successions, viii. 17.  
 disclaimer by successor, viii. 17.  
 exemptions, viii. 18.  
 rate of, viii. 19.  
 when payable, viii. 19.  
 acceleration and interest, viii. 19.  
 by whom payable, viii. 20.  
 a first charge, viii. 21; x. 123.  
 annual value, viii. 21.  
 method of charge, viii. 23.  
 method of collection, viii. 25.  
 proof of payment, viii. 26.  
 method of recovery, viii. 26.  
 overpaid, viii. 26.  
 discount, viii. 26.  
 compounding, viii. 26.  
 avoidance of administration, viii. 27.  
 passing accounts, viii. 27.

LEGAL, EXPIRY OF, i. 107; ix. 397.

LEGAL TENDER, viii. 372.

LEGAL TERMS, xii. 244.

LEGATEE. *See* Legacy.

discharge by, xii. 357.

title to sue, xii. 271.

special—  
 no right to accounts, ii. 50.  
 right to bonus, ii. 188.

residuary—  
 discharge by, xii. 358.  
 entitled to accounts, ii. 50.  
 sale of heritage, xi. 9.

LEGATUM LIBERATIONIS, vii. 369..

*LEGATUM REI ALIENÆ*, vii. 369; xii. 109.

*LEGITIM*, viii. 27, 272; iii. 208; vii. 259; ix. 177; xii. 41, 78-81.

advances put against, xii. 80.

bastard child, ii. 41.

cannot be defeated by settlement, vi. 182.

*collatio bonorum inter liberos*, iii. 92; xii. 80; xiv. 46, 79.

defeated by antenuptial contract provisions, viii. 272, 277.

discharge and satisfaction, viii. 29, 290; xii. 78, 79.

election, iv. 389.

executor of deceased child claiming, xiii. 68.

forisfamiliation, vi. 41.

interest on, xii. 121.

married women discharging, viii. 302.

Married Women's Property Act, xii. 80.

must claim against executor, xii. 131.

no right of representation in, xii. 87.

sums expended under Entail Act, xii. 81.

vesting, xiii. 68.

*LEGITIMACY*, ii. 39, 161. *See* Affiliation; Bastard; Legitimation.

*LEGITIMATION*, ii. 39; viii. 30. *See* Bastard; Domicile; Parent and Child.

*LEITH DOCK COMMISSIONERS*, ix. 307.

*LENOCINIUM OR CONNIVANCE*, viii. 34.

*LESE MAJESTY*, vii. 365.

*LESION*. *See* Minor.

*LESSER TERCE*, xii. 244.

*LETTER*. *See* Back Letter; Post Office.

definition, ix. 368.

delay in delivery, iii. 215.

presumption as to, x. 5.

stealing, ix. 367.

of attorney, ix. 373.

of guarantee to a bank, viii. 36. *See* Cautionary Obligations; Guarantee.

of guaranteee, etc.—

forms, viii. 36, 37.

negotiations preliminary to execution of, viii. 37.

constitution of obligation, viii. 38.

printed forms of, viii. 38.

interpretation of, viii. 39.

for ultimate loss, viii. 39.

hypothecation of, viii. 39.

*LETTER*—*continued*.

of guaranteee, etc.—*continued*.

continuing guarantee, vi. 150, 151.

Stamp Duty, viii. 39.

criminal, iii. 378.

of arrestment, i. 310, 311, 321, 323.

of credit, ii. 328; viii. 40; ix. 14.

general, viii. 40.

special, viii. 41.

stamp duty, viii. 41.

of cursing, iv. 49.

of horning, i. 310; vi. 228; x. 80; xii. 218.

of instructions—

as wills, vii. 372, 378.

of marque, x. 309.

of supplement, xii. 185, 186.

patent, for inventions. *See* Patent.

*LEWD PRACTICES*. *See* Indecent Practices.

*LEX COMMISSORIA, PACTUM LEGIS COMMISSORIÆ*, viii. 42.

*LEX DOMICILII*, vii. 45.

*LEX FORI*, vii. 46.

*LEX LIGEANTIAE*, vii. 45.

*LEX LOCI ACTUS*, vii. 45.

*LEX LOCI CONTRACTUS*, vii. 45.

*LEX LOCI SOLUTIONIS*, vii. 46.

*LEX REI SITÆ*, vii. 45.

*LEX RHODIA DE JACTU*, i. 262; x. 343.

*LEX TALIONIS*, viii. 43.

*LIABILITY*. *See* Employers' Liability; Workmen's Compensation.

charter-party, ii. 399.

conjunct and several, iii. 209, 287.

*culpa tenit suos auctores*, iv. 21.

for act of third party, iv. 23.

for assault, i. 329.

for assault by servant, xiii. 285.

for carriage of animals, ii. 303.

for carriage of passenger's luggage, ii. 303.

for collision between ships, iii. 94-100.

for dangerous animals, i. 223.

for future feu-duty, xii. 164, 165.

for illegal poinding, ix. 298.

for negligence, iv. 67; ix. 1; x. 281-302.

for damages—

for tug and tow, xii. 403.

*in solidum*, iii. 287.

joint adventure, vii. 92.

of advocates, i. 146.

**LIABILITY—continued.**

- of architects, xii. 204, 205.
- of assumed trustees, i. 341.
- of broker, ii. 229.
- of carrier, ii. 296.
- of bankrupt, xi. 252.
- of administrator-in-law, xiii. 16, 17.
- of agents, i. 169, 170; x. 15.
- of cautioners, ii. 330, 333, 342; iii. 287; viii. 329.
- of co-delinquents, iii. 78, 287.
- of co-obligants under bond for cash credit, ii. 183.
- of county assessor, i. 331.
- of curators, iii. 287; iv. 37, 41.
- of dentist, xiii. 254.
- of depository, iv. 202.
- of directors, iv. 236; vii. 136-139.
- of employer for contractor, iv. 22.
- of executors, v. 143-148.
- of feuars, heirs, and successors, xii. 163.
- of friendly societies, vi. 89.
- of harbour authorities, ix. 356.
- of heirs of provision, vi. 171, 172.
- of heirs, order of, vi. 172.
- of heirs-portioners, vi. 179.
- of innkeeper, vi. 360-366.
- of judicial mandatory, viii. 198.
- of Justice of the Peace, vii. 269.
- of landlord for tenant, iv. 22.
- of law agent, v. 169, 170; vii. 319-322.
- of liferenter, viii. 115.
- of medical practitioners, xiii. 255.
- of members of committee, i. 163.
- of messenger-at-arms, viii. 329.
- of parties to bill, ii. 103, 106, 109, 142; x. 69.
- of partners, iii. 287; ix. 157-173.
- of pilot, ix. 271.
- of principal and agent, x. 13-25.
- of pro-curator, iv. 43; xiii. 23.
- of promoters, vii. 282-289.
- of proprietary and members' clubs, iii. 65.
- of railway companies, x. 142, 143.
  - accident to servants, x. 164.
  - act of servants, x. 159.
  - carriage of goods, x. 146.
  - carriage of live stock, x. 150.
  - adjoining proprietors, x. 142.
  - carriage of passengers, x. 152.
  - carriage of passengers' luggage, x. 151.
  - conveyance of traffic, x. 145.

**LIABILITY—continued.**

- of railway companies—continued.
    - detention of trains, x. 156.
    - general public, x. 143.
    - left luggage, x. 152.
    - other companies, x. 144.
  - of representatives of feuar, xii. 163, 164.
  - of shipowners, iv. 121; xiii. 242.
  - of stockbrokers, xii. 20-22.
  - of sub-vassals, xii. 166.
  - of surveyor, xii. 205.
  - of trustees, iii. 287; xii. 252, 356, 357, 364-367, 373-394.
  - of trustee in bankruptcy, xi. 246.
  - of trustee in *cessio*, ii. 369.
  - of trustees for charitable purposes, ii. 395.
  - of tutors at law, xiii. 17, 25.
  - of tutors dative, xiii. 17.
  - of tutors nominate, xiii. 7, 9, 12, 13, 14, 16, 17, 18, 22, 23; iii. 287.
  - pro rata*, iii. 287.
  - representation, x. 309.
  - vicious intromitter, xiii. 126-128.
- LIBEL.** *See* Defamation; Criminal Prosecution; Indictment; Summons.
- amendment of, i. 215.
  - corpus delicti*, iii. 318.
  - turning the charge into a, xii. 216.
  - on criminal procedure, iii. 382; vi. 316; xiii. 61, 62.
  - res judicata*, x. 312.
- LIBERATION**, viii. 43. *See* Imprisonment for Debt.
- bail, i. 371-377.
  - interim, i. 252, 265, 275.
  - of convicts, iii. 275.
  - suspension and, xii. 211, 218.
- LIBERTY, RESTRAINTS ON**, x. 328.
- LIBIDINOUS PRACTICES.** *See* Indecent Practices.
- LIBRARIES (PUBLIC)**, viii. 44; xiv. 46. parish council's powers, ix. 121.
- advocates, i. 145.
  - Writer to the Signet, xiii. 227.
  - solicitors in the Supreme Courts, xi. 369.
- LICENCE—**
- billiard rooms, xiv. 61.
  - common lodging-houses, iii. 135.
  - ice-cream shops, xiv. 61.
  - motor carriages, xiv. 56.
  - slaughter-houses, xi. 347.
  - slaughtering horses, xi. 349.

**LICENCE—continued.**

- sky-signs, etc., xiv. 61.  
trading in gold and silver, xi. 341.  
release of convicts on, iii. 275; ix. 246;  
x. 9.  
to practise anatomy, i. 222.  
to preach, viii. 354.  
to sell table beer, viii. 57.  
to use advertisement hoardings, i. 140.  
to use tramway, xiii. 286.

**LICENCES.** *See* Licensing Act.

- appraisers, i. 285.  
armorial bearings, i. 308.  
auctioneers, i. 352.  
brewers, ii. 217.  
carriages, ii. 304.  
clubs, iii. 67; xiv. 18, 50.  
dogs, iv. 315.  
dramas, ii. 381.  
explosive substances, v. 178.  
firearms, vi. 154; xiii. 63.  
gamekeepers, viii. 49.  
innkeepers, vi. 365.  
law agents, vii. 313.  
male servants, i. 309; vi. 366.  
pawnbrokers, ix. 233.  
pedlars, ix. 239.  
public houses, etc., viii. 50.  
slaughter-houses, x. 95; xi. 347.  
theatres, ii. 381.  
to deal in game, viii. 45.  
to kill game, viii. 47.

**LICENSING (SCOTLAND) ACTS, 1828-1897, viii. 50.** *See* Licensing (Scotland) Act, 1903.

- authority, viii. 52.  
meetings under, viii. 53; xiv. 48.  
applications for certificates, viii. 54.  
suitability of premises and character  
of applicant, viii. 55.  
register of applicants, viii. 57.  
list of new applicants advertised, viii.  
55.  
objectors to granting certificates, viii.  
55.  
confirmation of new certificates, viii.  
56.  
licensing and joint committees appoint-  
ment duties, etc., viii. 57.  
appeal as to certificate, viii. 57; xiv. 48.  
appeal to Quarter Sessions, viii. 71.  
transfer of certificates, viii. 58.

**LICENSING (SCOTLAND) ACTS—contd.**

- certificates, etc., viii. 59.  
inn and hotel keepers, viii. 59.  
public house, viii. 59.  
grocers, viii. 60.  
hours for opening and closing, viii. 60.  
right to sell at fairs, viii. 60.  
right to sell porter, viii. 60.  
blacksmiths, viii. 61.  
null and void, viii. 61.  
weights and measures, viii. 61.  
special permissions, viii. 61.  
penalties for breach of certificate, viii. 61;  
xiv. 49.  
*bonâ fide* travellers, viii. 62, 63.  
charges for breach of certificate—  
grocer, viii. 65.  
hotelkeeper, viii. 62.  
publican, viii. 63.;  
penalties for shebeening, viii. 65.  
convictions for shebeening, viii. 66.  
warrant to seize exciseable liquors, viii.  
67.  
proof of trafficking in any shebeen, viii.  
67.  
persons drunk and incapable, viii. 68.  
prosecution of offences, viii. 69.  
procurator-fiscal to prosecute, viii. 69.  
complaints—  
application of penalties, viii. 69.  
hawking exciseable liquors, viii. 67.  
interpretation of "shebeen," "traffick-  
ing," and "hawking," viii. 68.  
 harbouring constables, viii. 69.  
grocers liable to shebeen penalties, viii.  
69.  
disorderly persons in public house, viii.  
69.  
*malâ fide* travellers, viii. 69.  
service, viii. 70.  
warrant to apprehend, viii. 70.  
power to summon witnesses, viii. 70.  
Police Court, viii. 70.  
evidence required, viii. 70.  
appeal to Quarter Sessions, viii. 71.  
warrant enforced in other counties, viii.  
71.  
sentences and judgments, viii. 71.  
relevancy of complaints, viii. 71.  
clerks, viii. 72.  
Chief Officer of Police, viii. 72.  
police powers of entry, viii. 72.

LICENSING (SCOTLAND) ACTS—*contd.*

clerks—*continued.*

police to report about licensed premises,  
viii. 73.

six day and early closing licence, viii. 73.

limitations of actions against judge or  
officer, viii. 74.

LICENSING (SCOTLAND) ACT, 1903, xiv.  
46.

Licensing and Appeal Courts, xiv. 47.  
meetings, xiv. 48.  
power, duties, and procedure, xiv. 49.  
offences and penalties, xiv. 49.  
registration of clubs, xiv. 50.  
legal proceedings, xiv. 51.

## LICKING OF THUMBS, viii. 74.

LIEGE POUSTIE, viii. 74. *See* Death-bed.

LIEN, viii. 74; ix. 279; xiv. 52. *See*  
Retention; Stoppage *in transitu.*  
and hypothec, viii. 75.  
possession, viii. 75.  
contracts inconsistent with, viii. 76.  
excluded by express security, viii. 76.  
special, viii. 77.  
possession before bankruptcy, viii. 77.  
general, viii. 79.  
general, limits of, viii. 80.  
by express contract, viii. 79.  
by advertisement, viii. 80.  
usage of trade, viii. 80.  
in question with true owner, viii. 81.  
rights of holder, viii. 81.  
waiver of, viii. 81.  
to whom competent, viii. 83.  
excluded of specific appropriation, viii.  
83.

for claim of damages, viii. 78.

for hire, vi. 220.

for wages, vi. 213.

maritime, xi. 330.

bottomry, ii. 197.

for collision, iii. 96.

*respondentia*, x. 324; xi. 86.

salvor's, viii. 79; xi. 65, 85, 86.

shipmaster and seamen, xi. 107, 108.

tug and tow, xii. 403.

of agent, i. 169; ii. 12; viii. 82, 83.

of bankers, i. 391–396; iv. 201; viii.  
39.

of bleachers, ii. 12.

of brokers, ii. 232.

LIEN—*continued.*

of carriers, ii. 302; xii. 25.

of factors, i. 168, 169; ii. 12; iii. 218;  
viii. 82, 83; x. 19.

of innkeepers, vi. 362; viii. 79.

of insurance broker, i. 169; ii. 232.

of joint stock companies, vii. 128.

of judicial factors, xi. 182.

of law agents, vii. 317; ix. 281; x.  
19.

of partners, ix. 176.

of pawnbrokers, ix. 234.

of printer, x. 27.

of railway companies, x. 145, 147, 149.

of reporter in remit, x. 277.

of trustees, viii. 84.

of trustee for creditors, xii. 401.

of vendors, i. 337; iv. 190; v. 208–210;  
viii. 83; xi. 46, 47.

over policy of insurance, x. 19.

## LIEUTENANT (LORD), viiji. 85.

deputy, viii. 85.

LIFE. *See* Presumption of Life.

salvage, xi. 67; xiv. 76.

## LIFE ASSURANCE COMPANIES, viii.

109.

proprietary, viii. 109.

companies partly mutual, viii. 110.

purely mutual societies, viii. 111.

## LIFE INSURANCE, viii. 88.

insurable interest, viii. 88

the proposal, viii. 91.

the policy, viii. 91.

representations and warranties, viii. 93.

premium, viii. 96.

excepted risks, viii. 99.

assignations of policies, viii. 100.

policies of Assurance Act, 1867, viii.  
100.

to be in writing, viii. 101.

right to grant discharge, viii. 102.

intimation, viii. 103.

stamp, viii. 104.

settlement policies, viii. 104.

policies as security, viii. 107.

bonus, ii. 188.

insured absentee, viii. 87.

succession, xii. 84.

Stamp Acts, xi. 458.

LIFERENT AND FEE, viii. 112. *See*

Liferenter; Vesting.

constitution of liferent, viii. 112.

**LIFERENT AND FEE**—*continued.*

in destinations to husband and wife, iii. 205; viii. 120.  
in destinations to parent and child, iii. 207; viii. 119.  
in destinations to strangers, iii. 208; viii. 118.  
alimentary liferent, xii. 122.  
liferent, alienarily, i. 207.  
assignment of, vi. 326.  
liferent of moveables, vi. 100; viii. 117.  
renunciation of liferent, xii. 395; xiii. 101.  
termination of liferent, viii. 116.

**LIFERENT, ESCHEAT.** v. 96; vi. 36; xii. 178.

**LIFERENTER**—

assignments and discharges, ii. 171; iv. 238.  
casualty not payable by, xii. 169.  
caution, ii. 351.  
entering vassals, xii. 156.  
franchise, vi. 48, 49.  
*grassums*, vi. 140.  
holding tack over subjects, viii. 187.  
Lands Clauses Act, vii. 293.  
liability of, viii. 115.  
to aliment faiar, i. 202.  
for taxes, burdens, etc., viii. 115.  
for upkeep, etc., ii. 290; viii. 115.  
liability to faiar as heritable creditor, vi. 194.  
must not prejudice faiar's rights, xii. 338.  
no right to casualties, vi. 92.  
removing tenant, xii. 234.  
representative's right to crop, viii. 330.  
representative's right to fixtures, vi. 29.  
rights of, viii. 113.  
to bonuses, ii. 188.  
to fruits of subject, vi. 92.  
to grant leases, vii. 333.  
to minerals, vi. 92; viii. 114, 342; xii. 362.  
superiority and title deeds, viii. 114.  
to timber, viii. 113; xii. 239.  
sale of property, xii. 364.  
surrogatum, xii. 202.

**LIGHT, SERVITUDE OF**, viii. 122; xi. 265.**LIGHTHOUSES**—

poor rates, x. 190.

**LIGHTING**—electric, v. 19; xiv. 29.  
special district, iv. 301.**LIGHTNING**—

fire insurance, v. 343.

**LIMITATION.** *See Prescription.*of liability. *See Carrier.*

railway companies', x. 147.

shipowners', xi. 333.

tonnage, how calculated, xi. 333.

**LIMITED LIABILITY.** *See Companies.***LINEAL ASCENT AND DESCENT**, xii. 44.**LINING**—

brief of, ii. 224.

Dean of Guild declining a. iv. 94.

**LIQUIDATE DAMAGES**, iv. 78; ix. 243.**LIQUIDATOR.** *See Companies.*

accounts of, xii. 185.

discharge by, iv. 238.

discharge of, xii. 185.

power to compromise, iii. 163.

remuneration of, xii. 185.

title to sue, xii. 278.

unclaimed dividends, xii. 185.

**LIS ALIBI PENDENS**, viii. 123; iv. 157.**LIST**—calling, ii. 278. *See Rolls.*

civil, iii. 39.

of contributories. *See Company; Contributors.*of members of company. *See Company.*  
of voters. *See Registration of Voters.***LITERAL CONTRACT**, ix. 79.**LITERARY PROPERTY**, iii. 290.**LITIGIOSITY**, viii. 124. *See Abbreviate of Sequestration; Adjudication; Inhibition.*

notice of, xi. 116.

prescription, xi. 116.

registration of notice, xi. 116.

**LITIS-CONTESTATION**, viii. 125.**LIVE STOCK, CARRIAGE OF**, x. 150.  
*See Railway.***LOADING OF CARGO**, ii. 403; iv. 194.**LOAN**, viii. 126. *See Absolute Disposition;**Bond; Bond and Disposition in Security; Bottomry; Respondentia.*

building by trustees, xii. 375, 376.

commodate, iii. 123; viii. 127.

failure of security, ii. 291.

gratuitous, viii. 394.

local, x. 209.

*mutuum*, viii. 127, 394.

on share of profits, xi. 149, 150.

pawnbroking, ix. 231.

- LOAN**—*continued.*  
 proof of, v. 133.  
*præcarium*, ix. 377.  
 prescription, x. 129.  
 risk, x. 348.  
 to co-trustee, xii. 354, 379.  
 trust, xii. 372.  
 waterworks, xiii. 186.
- LOANING**, viii. 132. *See Iter; Actus.*
- LOBSTERS**, vi. 9.
- LOCAL ACT.** *See Private Bill.*
- LOCAL ALLEGIANCE.** *See Alien.*
- LOCAL AUTHORITY.** *See County Council; Local Government Board; Parish Council; Public Health.*
- purchase of allotments, i. 209.  
 burial grounds, ii. 271.  
 Contagious Diseases (Animals), iii. 243, 251.  
 licensing carriages, xiii. 288.  
 locomotives on highway, viii. 140, 141.  
 Public Health Acts, x. 91–117.  
 purchase of tramway, xiii. 237.  
 regulating speed, xiii. 288.  
 vagrants, xiii. 58.  
 valuation roll, i. 331.  
 Loans (Scotland) Act, xii. 372, 373.
- LOCAL CUSTOMS**, xiii. 47.
- LOCAL GOVERNMENT BOARD FOR SCOTLAND**, viii. 132. *See Joint Committee; Secretary for Scotland; Standing Joint Committee.*  
 constitution, officers, etc., viii. 133.  
 powers and duties, viii. 133.  
 parish councils, viii. 133.  
   election and general business, viii. 133.  
   trusts, viii. 133.  
   acquisition and alienation of land, viii. 134.  
   relief of poor, viii. 134; ix. 326.  
   vaccination, viii. 135; xiii. 55–57.  
 local sanitary authorities, viii. 135.  
   under Public Health (Scotland) Act, viii. 135; x. 91.  
 Infectious Diseases Notification Act, viii. 136.  
 Cleansing of Persons Act, viii. 136.  
 Housing of the Working Classes Act, viii. 136.  
 dairies, viii. 136.  
 title to sue, xii. 273.
- LOCAL TAXATION.** *See Rating.*
- LOCALITY**, viii. 136. *See Augmentation; Teinds.*  
   dedicated to nuisance, ix. 40.  
   of a widow. *See Marriage-Contract; Terce.*
- LOCATIO CONDUCTIO**, viii. 136.
- LOCATIO OPERIS**, vi. 203.
- LOCATIO REI**, vi. 199.
- LOCATION.** *See Hiring.*
- LOCHMABEN, RENTALLERS OF**, xii. 237–239.
- LOCHS**, viii. 137. *See Water.*  
   parts and pertinents, ix. 183.  
   rights of joint proprietors, viii. 138.  
   surrounded by lands of different proprietors, viii. 138.  
   surrounded by lands of one proprietor, viii. 137.
- LOCK**, viii. 138. *See Thirlage.*
- LOCKFAST PLACES**, viii. 139.  
   aggravation of theft, viii. 139.  
   officers breaking open, xiii. 160.  
   search warrant, xi. 125.
- LOCOMOTIVE**, viii. 139.  
   on highway, viii. 139.  
   limit of speed, viii. 140.  
   use over bridges, viii. 140.  
   smoke consumption, viii. 140.  
   wheels, weight and width of, viii. 140.  
   by-laws as to use, viii. 141.  
   power to prohibit use, viii. 141.  
   use for ploughing, viii. 142.  
   light, viii. 142.  
   lights, bell, speed, viii. 142.  
   regulations by Secretary for Scotland, viii. 142.
- LOCUS DELICTI**, i. 216; iii. 158; vi. 318; viii. 142. *See Alibi; Indictment.*
- railway companies, x. 173.
- LOCUS PÆNITENTIAE**, viii. 143.
- LOCUS STANDI**, viii. 144. *See Private Bill; Provisional Order; Referee.*  
 practice, viii. 144.  
 doctrine of representation, viii. 146.  
 owners, lessees, and occupiers, viii. 146.  
 status, jurisdiction, etc., viii. 148.  
 injury to business and trading interests, viii. 149.  
 competition, viii. 150.  
 general injury to district, viii. 151.

## INDEX

## LODGERS—

*bond fide*, viii. 63.  
franchise, vi. 50 ; x. 272 ; xiv. 36.

LODGING - HOUSES. *See* Innkeeper ;  
*Nautæ, caupones, stabularii.*

by-laws, iii. 134 ; x. 101.

common, iii. 135.

Public Health Acts, x. 103.

working class, vi. 239.

LODGING PAPERS, viii. 153 ; xiv. 53.  
defences, i. 76 ; xii. 264.  
appeal to Circuit Court, i. 252.  
appeal to Court of Session, i. 261.  
appeal to High Court of Justiciary, i.

264, 265.

appeal to House of Lords, i. 271.

appeal to Quarter Sessions, i. 274.

appeal to Sheriff, i. 278.

notice of appearance, i. 280.

productions, x. 65 ; xiv. 53.

LOG-BOOK, viii. 154.

LONG LEASES. *See* Lease.

LOOSING ARRESTMENT, i. 318.

LORD ADVOCATE, viii. 156.

consent required, iii. 167.

advocates-depute, i. 149.

LORD CLERK REGISTER, x. 237. *See*  
Registration.

LORD JUSTICE-CLERK, vii. 261.

LORD JUSTICE-GENERAL, vii. 262.

LORD LIEUTENANT, viii. 85.

LORD ORDINARY, ix. 99.

LORD ORDINARY, JUNIOR, ix. 100.

LORD PRESIDENT, vii. 262.

LORDS, HOUSE OF, viii. 159. *See* Private  
Bill.

as appellate tribunal, viii. 161.

## LOSS—

average, i. 362-367. *See* Fire Insurance ;  
Marine Insurance.

## LOST—

interlocutor, vii. 40.

bill, ii. 103, 111 ; xii. 142.

cheques, ii. 416.

deposit receipt, iv. 204.

property, viii. 164 ; ix. 88 ; x. 326.

register of births, deaths, and marriages,  
x. 261.

writings, viii. 165.

LOTTERIES, vi. 107 ; viii. 165 ; x. 61.

LUCID INTERVAL, vii. 4.

LUCRATIVE SUCCESSION, ix. 187.

## LUGGAGE, viii. 400.

innkeeper's liability, vi. 362.  
carriage of passenger's, ii. 303.  
railway carriage of, x. 151.

## LUMP FREIGHT, vi. 70.

LUNACY ACTS, viii. 168 ; xi. 303. *See*  
Brieve ; Insanity ; Judicial Factor ;  
Settlement.

property of lunatics, viii. 168.

## board of lunacy—

powers and duties, viii. 164, 169 ; xiv.  
53.

reception and detention of lunatics, viii.  
164.

## district asylums—

institution and maintenance, viii. 171.  
pauper lunatics, viii. 172 ; ix. 343 ; xi.  
303, 312.

criminal lunatics, viii. 174.

dangerous lunatics, viii. 173 ; x. 61.

maltreatment of lunatics, viii. 176.

LUNATIC ASYLUMS, viii. 169-176 ; x.  
206.

## LYON COURT, i. 308.

## LYON KING-OF-ARMS, viii. 176.

armorial bearings, i. 307.

jurisdiction of, viii. 328.

messenger-at-arms, viii. 328.

precedence, ix. 386.

## LYON OFFICE, viii. 176.

MACER, viii. 179 ; i. 313 ; ii. 294 ; xiii. 162.  
of Lord Lyon, viii. 178.

MACHINERY, viii. 180 ; x. 292, 293. *See*  
Coal Mines Regulation Acts.

*actio quanti minoris*, x. 126.

as a fixture, vi. 26.

cleaning of, v. 219.

fencing, v. 218 ; viii. 180.

at common law, viii. 180.

by statute, viii. 180.

Lands Valuation Amendment Act, xiv. 36.

rating, xiv. 72.

sale of, xi. 13, 32.

securities over, xi. 145.

self-acting, v. 219.

stoppage *in transitu*, xiii. 27.

MAGISTRATE, viii. 180. *See* Bailie.

admonition by, i. 133.

applications for bail, i. 373.

apprehension of criminals, i. 286 ; xiii.  
159.

**MAGISTRATE**—*continued.*

arbitrary punishments, i. 296.  
 attestor, i. 348; ii. 349.  
 backing a warrant, i. 369–371.  
 bankruptcy of, xi. 252.  
 claiming salvage, xi. 71.  
 declarations by prisoners, iv. 117.  
 foreshore, xii. 281.  
 jurisdiction of Sheriff over, xi. 320.  
 passports, xiii. 275.  
 Police Court duties, ix. 311.  
**Prevention of Crimes Act**, x. 12.  
 privileges of, iii. 42.  
 property of the burgh, iii. 127.  
 sale by, iii. 130.  
 search-warrants, xi. 125.  
 threatening, xii. 259.  
 stipendiary—

Glasgow Police Act, appointments under, ix. 319.  
 jurisdiction, xii. 15.  
 Police Court duties, ix. 311.  
 qualification, xii. 15.  
 salary, xii. 15.

**"MAIDEN" CIRCUIT**, viii. 181.

**MAIL**, viii. 181.  
 coach, ii. 304.

**MAILS AND DUTIES**, viii. 181; iv. 233.

action of, viii. 181.  
 effect of decree, viii. 184; xi. 200; xii. 279.  
 form of summons, viii. 183.  
 joint proprietors, vii. 93.  
 superior no remedy by, viii. 182.  
 title to defend, xii. 281.

assignation of, viii. 187.

prescription of, viii. 187.

**MAIM**, viii. 188.**MAIMING OF CATTLE**, viii. 188.**MAINTENANCE**. *See* Aliment.

of industrial and reformatory schools, iv. 380, 381.

of manses, viii. 204.

of ports and harbours, ix. 353.

**MAINTENANCE (CHAMPARTY)**, ii. 273, 382.**MAJESTATIS CRIMEN**, xii. 305.**MAJOR AND MINOR (INDICTMENT)**, vi. 317.**MAJORITY**, viii. 188.**MALE APPRETIATA**, i. 133.**MALA FIDES**, viii. 189; ii. 160.

recompense, x. 228.

**MALICE**, viii. 189; vii. 81; x. 288. *See*

Assault; Civil Process, Abuse of.

action founded on, iv. 83.

and want of probable cause, iv. 151.

arrestments, i. 320.

by Sheriff, i. 257.

caption-process, ii. 295.

in slander, iv. 151.

of witnesses, xiii. 213.

privilege, iv. 149; viii. 189.

**MALICIOUS MISCHIEF**, viii. 193; ix. 273.

prosecution, ix. 312, 320; x. 72.

**MALUM IN SE**; **MALUM PROHIBITUM**, viii. 195.**MALVERSATION**, viii. 195.**MANDATORY (JUDICIAL)**, viii. 195; xiv. 53. *See* Mandate.

how sisting is effected, viii. 196.

who must sist, i. 310; viii. 196; xiv. 53.  
 consistorial actions, i. 200; iii. 220  
 iv. 308.

who may be, viii. 197.

how sisting is obviated, viii. 197.

failure to sist, viii. 197.

liabilities of, viii. 198.

prescription, xii. 316.

termination of mandate, viii. 197.

to defender, iv. 161.

**MANDATE**, viii. 199. *See* Power of Attorney; Proxy; Mandatary; Principal and Agent.

advocate's, i. 145.

appeal to High Court, i. 264.

death of grantor, ii. 164.

death of mandatory, iv. 98.

in sequestration, xi. 172.

law agent's, xi. 7.

not a trust, xii. 334.

partner's, ix. 157.

registration of voters, x. 272.

to operate on bank account, iv. 47.

to sell goods, iii. 219.

to vote, xi. 189.

wife's, ix. 378.

**MANIA**. *See* Insanity.**MANSE**, viii. 202. *See* Stipend.

competent, viii. 203.

exempt from ecclesiastical assessment, xiv.

- MANSE—*continued.*  
 “Free,” viii. 204.  
 “maill,” viii. 206.  
 maintenance of, viii. 204.  
 minister’s liability for taxation, viii. 208.  
 minister’s obligation, viii. 207; xiv. 54.  
 obligation to provide, viii. 203.  
*quoad sacra* and *quoad omnia* (parliamentary) parishes, i. 229; viii. 208.  
 repairs, additions, etc., iv. 367; viii. 205, 207.  
 site of, iv. 212.  
 standard of comfort, viii. 206.  
 sufficient, viii. 206.  
 suitable residence, viii. 206.  
 who entitled to, viii. 202, 203.
- MANSION-HOUSE, viii. 209.  
 on entailed estate, viii. 210.  
 judicial factor rebuilding, vii. 199.  
 Lands Clauses Act, x. 135.  
 repairs, etc., by tutor, xiii. 14, 20.  
 rights of heirs-portioners, xii. 48, 49.  
 surface damage, xii. 194.  
 trustees’ completing, xii. 365.  
 widow’s terce, xii. 243.
- MANSLAUGHTER, iv. 23.
- MANURE, iii. 307; iv. 363.
- MAPS AND PLANS—  
 in evidence, ii. 191; viii. 212.  
 annexed to title, ii. 206.  
 reference to feuing, ii. 234.  
 copyright, iii. 307.
- MARCH STONES, ii. 205.
- MARCHES, viii. 212. *See* Bounding Charters.  
 enclosing, ix. 273.
- MARGARINE, xi. 62; xiv. 75.
- MARGINAL ADDITIONS—  
 in affidavits, i. 153.  
 in deeds, iv. 131, 136.  
 in wills, xii. 91; xiii. 198.
- MARINE INSURANCE, viii. 214. *See* Adjustment; Average; Charter-Party; Collision; Embargo; Freight; Salvage. abandonment, i. 4.  
 adjustment of losses, viii. 238.  
 “all other perils, etc., losses,” viii. 233.  
 commencement of risk, viii. 228.  
 concealment and misrepresentation, viii. 217.  
 cumulative losses, viii. 238.  
 double insurance, viii. 223.
- MARINE INSURANCE—*continued.*  
 insurance interest, viii. 215.  
 insurable value, viii. 217.  
 memorandum clause, viii. 237.  
 mutual insurance associations, viii. 241.  
 partial loss, viii. 236.  
 perils insured against, viii. 231.  
 barratry, ii. 34; viii. 233.  
 fire, viii. 232.  
 jettison, i. 363; viii. 233.  
 perils of the sea, viii. 231.  
 pirates, rovers, viii. 232.  
 thieves, viii. 232.  
 war risks, etc., viii. 231.  
 policy, viii. 219.  
 floating, viii. 222.  
 honour, viii. 215.  
 unvalued, viii. 222.  
 valued, viii. 222.  
 premium, viii. 221.  
 return of premium, viii. 241.  
 stamp duty, viii. 221; xi. 456.  
 subrogation, viii. 239; xii. 34.  
 suing and labouring clauses, viii. 238.  
 termination of risk, viii. 230.  
 total loss, viii. 234.  
 warranties, viii. 225.  
 deviation, etc., iv. 219; viii. 228.  
 express, viii. 228.  
 legality, etc., viii. 227.  
 seaworthiness, viii. 226; xi. 133, 137.
- MARINE LEAGUE, xi. 98.
- MARITIME ACTIONS, i. 71.  
 Sheriff Court, xi. 308.
- MARITIME HYPOTHEC. *See* Hypothec.
- MARITIME INTEREST, ii. 197.  
 lien. *See* Lien.  
 war, xiii. 150.
- MARK, SUBSCRIPTION BY, iv. 144; viii. 242. *See* Forgery.  
 bills of exchange, xii. 142.  
 forgery of, vi. 39.  
 will, xiii. 195.
- MARKET GARDENS, xiv. 2.  
 overt, viii. 243. *See* Restitution; Sale; *Vitium reale.*
- MARKETS. *See* Fairs and Markets.
- MARKING OF GOODS. *See* Delivery of Moveables.
- MARKS (MERCHANTISE) ACT. *See* Merchandise Marks Act.

MARQUE. *See* Reprisal.

MARQUIS, viii. 243. *See* Dignities; Peerage.

MARRIAGE, viii. 244. *See* Banns; Declarator of Marriage; Divorce.

constitution of regular, viii. 257.

- irregular, ii. 64; vi. 157; viii. 259.
- clandestine, viii. 257.

definition, viii. 244.

foreign, vi. 34, 35.

grounds of nullity—

- adultery, viii. 252. *See* Adultery.
- consanguinity and affinity, i. 159; viii. 248.
- error, force and fraud, viii. 253.
- impotence, viii. 246.
- insanity or intoxication, viii. 247.
- no genuine consent, viii. 253-256.
- nonage, i. 162; viii. 245.
- non-residence in Scotland, viii. 251; xii. 264.
- previous marriage, viii. 250.
- Royal Marriage Act, viii. 253.
- effect of decree, viii. 256.

how question tried, viii. 266.

international aspect of, viii. 267.

notice (Scotland) Act, ii. 25.

of servant, vi. 216.

of soldier, i. 309.

of Writers to the Signet, xiii. 227.

with alien, i. 188.

with paramour, i. 138.

presumptions, x. 8.

registration of, viii. 269; x. 265. *See* Registration.

irregular, x. 266.

MARRIAGE-CONTRACT, viii. 270; xii. 97. *See* Divorce; Appointment; Succession; Revocation.

antenuptial contract, viii. 274, 275; xii. 73.

- assumption of new trustees by spouses, i. 283; viii. 281.
- effect of insolvency, vii. 17.
- execution after marriage ceremony, viii. 281.
- exclusion of legal rights, viii. 277.
- general forms and provisions, viii. 275.
- government duties, viii. 282.
- liability for wife's debts, viii. 281.
- mutual rights, viii. 282.
- power to encroach on capital, viii. 281.

MARRIAGE-CONTRACT—continued.

antenuptial contract—continued.

- provisions by husband to children, viii. 276.
- provisions by husband to wife, viii. 275.
- provisions by wife, viii. 279.
- provisions under Entail Acts, viii. 276.
- rights and obligations between husband and wife, vii. 242-247; viii. 282-286.
- rights and obligations between parents and children, vii. 243-247; viii. 286-293.
- security for provisions, viii. 278.
- stamp duty, viii. 281; xi. 462.
- validated by *rei interventus*, viii. 281.
- reduction of, vi. 226.
- fixing domicile, xii. 342.
- legal rights of spouses and children, viii. 270.
- meaning of "Heirs and Bairns," vi. 176; xii. 65.
- modification of legal rights, viii. 272.
- postnuptial contracts and settlements, viii. 293.
- insolvency, vii. 17.
- revocation of, x. 341, 343; xii. 97, 98, 341.

MARRIED WOMAN, viii. 294. *See* Husband and Wife; Marriage; Wife; Conjugal Rights.

antenuptial debts, i. 238.

as arbiters, i. 294.

as partner, viii. 298; ix. 154.

as pursuer or defender, viii. 299.

as shareholder, viii. 299.

as trustees, xii. 349.

as voter, viii. 300.

as witness, viii. 300.

delicts and quasi-delicts, viii. 298.

discharges by, iv. 238.

exceptions to doctrine incapacity, viii. 295-298.

heritable estate of, viii. 298.

heritable securities by, vi. 187.

income tax, vi. 266, 268.

obligations by, viii. 294-300.

parish councillors, ix. 113.

*præpositura*, ix. 378.

policies of assurance, viii. 296.

School Board, xi. 93.

searches against, xi. 121.

## INDEX

MARRIED WOMAN—*continued.*

sequestration of, xi. 168.

suing for reparation, x. 285.

## MARRIED WOMEN'S POLICIES OF ASSURANCE (SCOTLAND) ACT, 1880, viii. 296, 301.

Property (Scotland) Act, 1877, viii. 296, 304. *See Wife.*

Property (Scotland) Act, 1881, viii. 294, 296, 298, 301. *See Administration (Husband); Conjugal Rights; Wife.*  
marriages prior to Act, viii. 303.

## MARTIAL LAW, viii. 305.

MASTER OF SHIP. *See Shipmaster; Ship; Bill of Lading; Bottomry; Respondentia; Charter-Party.*  
of the mint, ii. 239.MASTER AND SERVANT, viii. 305. *See Apprentice; Employers' Liability Act; Factory and Workshop Act; Hiring; Reparation; Workmen's Compensation Act.*

arrestment of wages, i. 314.

breach of contract, iv. 76.

character of servant, ii. 388.

Conciliation Act, 1896, viii. 309.

Conspiracy and Protection of Property Act, 1875, viii. 310.

contributary negligence by fellow-servant.  
iii. 271.

death or sickness, vi. 216.

desertion of service, iv. 76, 210.

dissolution of partnership, ix. 172.

earnest, i. 323; iv. 365; vi. 205.

Employers' and Workmen's Act, 1875,  
viii. 305; xi. 359.

persons under the Act, viii. 307.

powers conferred on Court, viii. 307.

rescission of contract, viii. 307.

what is a dispute, viii. 307.

injuries through fellow-servant, v. 256.

enlistment, vi. 216.

imprisonment, vi. 216.

insuring life, viii. 90.

marriage of servant, vi. 216.

obligations of the parties, viii. 306.

prescription of wages, xii. 314.

safety of premises, ix. 2.

warning, vi. 207.

## MAXIMS, viii. 314.

*accessorium sequitur principale.* i. 29, 27.

*a calo usque ad ecntrum.* i. 52.

MAXIMS—*continued.*

*actio personalis moritur cum persona,* i. 65.

*actor sequitur forum rei,* i. 83.

*a non domino,* i. 233.

*a non habente protestatem,* i. 238.

*ad omissa vel male appretiati,* i. 133.

*causa proxima, non remota spectatur,* ii.  
311.

*chirographum apud debitorem repertum  
presumitur,* iii. 7.

*chirographum non extans presumitur solu-  
tum,* iii. 7.

*communis error facit jus,* iii. 144.

*concurrus debiti et crediti,* iii. 168.

*conditio si sine liberis,* iii. 171.

*contra non valentem agere non currit praes-  
criptio,* ix. 496.

*de minimis non curat praetor,* iv. 191.

*delegatus non potest delegare,* iv. 171.

*dies dominicus non est juridicus,* iv. 223.

*dies cedit: dies venit,* iv. 222.

*dies fasti: dies nefasti,* iv. 223.

*dies inceptus pro completo habetur,* iv. 224.

*dies incertus pro conditione habetur,* iv. 224.

*dies interpellat pro homine,* iv. 224.

*dolus malus,* iv. 316.

*dolus bonus,* iv. 317.

*dominium eminens,* iv. 329.

*dum se bene gesserit,* iv. 140.

*falsa demonstratio non nocet,* v. 249.

*id certum est quod certum reddi potest,* vi.  
251.

*id tantum possumus quod de jure possumus,*  
vi. 252.

*ignorantia juris neminem excusat,* vi. 252.

*laesio enormis,* vii. 278.

*meliор est conditio possidentis vel defend-  
entis,* viii. 324.

*messis sementem sequitur,* viii. 330.

*negotiorum gestio,* ix. 15.

*pater est quem nuptiae demonstrant,* ix. 228.

*pendente lite nihil innovandum,* ix. 252.

*possessio decennalis et triennalis,* ix. 357.

*prior tempore potior jure,* x. 27.

*querela inofficiosi testamenti,* viii. 29.

*volenti non fit injuria,* x. 269.

## MEALS—

Factory and Workshop Acts, v. 225,  
241, 242.

MEASUREMENT. *See Bounding Charter;  
Sale.*MEASURES. *See Weights and Measures.*

- MEDALS, x. 237.
- MEDICAL COUNCIL, xiii. 248, 249.  
diplomas, xiii. 250.  
jurisprudence, viii. 315.  
officer of health, viii. 315. *See* Public Health Acts.  
in burghs, viii. 316.  
in counties, iii. 352; viii. 316.  
parish council, ix. 332.  
qualification, viii. 316.  
powers and duties, viii. 316-319.  
practitioners, viii. 319; xiii. 246. *See* Surgeon.  
as witness, ix. 97; xiii. 213.  
bill of health, ii. 124.  
certificate of death, x. 265.  
confidential communications, iii. 185.  
criminal responsibility, xiii. 254.  
dead body, i. 222.  
fees, iv. 101; x. 5; xiii. 284.  
fees for dissection, x. 60.  
negligence of, ix. 3; xiii. 254.  
notification of infectious disease, viii. 319; xiii. 255.  
opinion evidence, ix. 97, 98.  
prescription of fees, xii. 315.  
privileges of registered persons, xiii. 250.  
prohibition as to area of practice, ix. 244.  
qualification and registration, i. 329; xiii. 246-251.  
removing from register, xiii. 249.  
Stamp Acts, xi. 417.  
women as, xiii. 251.
- MEDITATIO FUGÆ*, i. 314; viii. 319.  
form of petition, viii. 322.  
debt founding petition, viii. 320.  
justification for warrant, i. 155; viii. 320.  
who can be apprehended, viii. 322.  
warrant and jurisdiction, vii. 223; viii. 319-320; ix. 315.  
execution of warrant, viii. 321.  
debtor's right to aliment, viii. 321.  
wrongful proceedings, iii. 42; viii. 321.  
suspension and liberation, viii. 322; xii. 218.
- MEDIUM FILUM*, i. 117.
- MEETINGS, viii. 323. *See* Mobbing.  
in *cessio*, ii. 362.  
in sequestration, xi. 190, 215, 253, 254.  
licensing, viii. 53; xiv. 48.  
minutes of, viii. 369.
- MEETINGS—*continued.*  
motions at, viii. 375.  
of joint stock companies, vii. 139, 144.  
in liquidation, xii. 185.  
of Writers to the Signet, xiii. 227.  
previous question, x. 12.  
public, viii. 323.  
breach of the peace, ii. 210.  
vote by proxy, x. 87.
- MELIORATIONS, viii. 324. *See* Lease; Agricultural Holdings Act; Entail.  
*bond fide* possession, ii. 160.
- MELIOR EST CONDITIO POSSIDENTIS VEL DEFENDENTIS*, viii. 324.
- MEMBER OF PARLIAMENT. *See* Parliament, Member of.
- MEMBERS—  
clubs, iii. 65.  
friendly societies, vi. 78.  
industrial and provident societies, vi. 323, 324.  
joint stock companies, vii. 128.  
trade unions, xii. 295.
- MEMORANDUM—  
as a will, xii. 90.  
commutation of casnalties, xii. 178.  
commutation of services, xii. 160, 161.  
with will, xiii. 193, 194.
- MEMORANDUM OF ASSOCIATION. *See* Company.
- MERCANTILE AGENT, v. 205.  
books as evidence, ii. 191.  
law, vii. 306.  
marine offices, xi. 103.  
guaranty, vi. 147-151.  
writings, vii. 2.
- MERCHANDISE MARKS ACTS, 1887, 1891, viii. 325.  
offences under, viii. 325.  
defences to charges, viii. 326.  
tribunal, viii. 327.  
penalty for offences, viii. 327.
- MERCHANT SHIPPING. *See* Ship; Seamen.
- MESSENGER-AT-ARMS, viii. 327. *See* Sheriff Officer.
- arrestments, i. 312.  
augmentation, i. 358.  
blazon, ii. 151.  
brieve from Chancery, ii. 222.  
charging debtor, ii. 389-392.  
charging a firm, ix. 156.

MESSENGER-AT-ARMS—*continued.*

citation by, iii. 25.  
citation of witnesses, xiii. 162.  
deforcement of, iv. 161.  
executing warrants, i. 370; v. 137;  
  xiii. 159.  
jurisdiction of Court of Session, viii. 328.  
jurisdiction of Lyon King-of-Arms, viii.  
  328.  
liability of, v. 96; viii. 329.  
liability of their cautioners, viii. 329.  
letters of horning, vi. 228.  
removing tenants, xii. 235.

*MESSIS SEMENTEM SEQUITUR,*  
viii. 330.

## METERS—

water, xiii. 181.

MID-SUPERIORITY. *See* Superiority;  
Feudal System; *Dominium directum.*

## MILITARY—

courts-martial, iii. 369.

Lands Act, 1892, viii. 331; 1903, xiv. 54.  
law, vii. 306; viii. 332. *See* Army and  
Martial Law.

flogging, xiii. 190.

volunteers, xiii. 140.

Manœuvres Act, 1897, viii. 332.

## service—

yeomen, xiii. 229, 230.

testament, viii. 334.

MILITIA, viii. 334; x. 207. *See* Army.

fraudulent enlistment, viii. 335.

officers, viii. 335.

punishment for offences, viii. 335.

reserve, x. 315.

who are liable to serve, viii. 334.

## MILK SHOPS. iv. 62.

MILL, viii. 335. *See* Thirlage.

a distinct tenement, viii. 336.

of barony, ii. 34.

lease, vii. 347.

right to erect, viii. 336.

watercourse, xiii. 175, 176.

## MINERAL LEASES, vii. 346; viii. 343.

*See* Lease; Mines.

nature of contract, viii. 343.

rent and royalty, viii. 343.

stipulations as to management, viii. 344.

MINERALS, viii. 336. *See* Mines.*avulsio*, i. 368.

clay, iii. 51; xiii. 179.

encroachment of, ii. 159.

MINERALS—*continued.*

liferenter's rights, viii. 114.

prescription, ix. 399.

purchase by railway, x. 133.

reservation of, v. 291, 292; viii. 340;  
  xii. 179, 180.

submarine, xi. 99; xiii. 240; xiv. 54.

under foreshore, xi. 103.

widow's terce, xii. 49, 243.

wrongful abstraction of, iv. 82.

MINES, viii. 338. *See* Minerals.

abandonment of, iii. 71, 72.

annual returns, iii. 71.

Coal Mines Regulation Act, iii. 67.

drainage of, xiii. 167.

fencing disused, x. 289.

fencing of, ix. 276.

gold and silver, i. 208; vi. 125; x. 253.

income tax, vi. 271, 273, 274.

inspection of, iii. 72.

limited estate in, viii. 342.

meaning of, viii. 338.

measure of damage for trespass, viii.  
  346.

mining code, viii. 347.

communications, viii. 349.

compensation for not working, viii. 348.

purchase, viii. 347.

right of inspection, viii. 350.

severance preventing continuous work-  
ing, viii. 349.

ownership in, viii. 340.

pollution of rivers, x. 365.

railway provisions as to, x. 133, 134,  
  135.

rating, x. 190.

royal and base, viii. 339.

support to buildings, viii. 352; x. 291;  
  xii. 195, 200.support to land, viii. 352; x. 291; xii.  
  187, 195.

surface damage, viii. 345, 352; x. 291.

Tramways Act, 1870, xiii. 284.

Waterworks Clauses Act, xiii. 178–180.

watercourse, xiii. 173.

water in, viii. 350.

## MINISTER, viii. 353.

confidential communications, iii. 185;  
  xiii. 213.

exempt from jury, viii. 355.

marriage without banns, i. 379.

marriage schedule, ii. 25, 26.

**MINISTER—continued.**

minister dissenting—

- rights against his denomination, viii. 355.
- stipend, i. 341.

**parish—**

- ad vitam aut culpam*, i. 140.
- Ann, i. 226.
- appointment of, vii. 248–250; viii. 354; ix. 231.

assistant, i. 360.

arrestment of stipend, i. 313.

augmentation of stipend, i. 355–361.

blind persons, ii. 153.

demission, iv. 194.

deposed, i. 228; iv. 205.

election of, iii. 13.

execution of will, xiii. 196, 198.

glebe, vi. 123.

grass of kirkyard, ii. 270.

income tax, vi. 293, 301.

induction, viii. 354.

manse, viii. 202.

minister's man, viii. 355.

minister's grass, vi. 138.

parliamentary churches, ix. 130.

poor roll, certificate for admission to, ix. 344.

proclamation of banns, ii. 23, 25.

*quoad sacra* parish church, i. 229; iv. 249; ix. 125.

rating, viii. 208; x. 190.

representative's right to crop, viii. 330; xii. 237.

seat in church, xi. 128, 131.

stipend, xii. 13, 14.

title by possession, ix. 357.

widow's fund, i. 314; ix. 125.

**MINOR**, viii. 356; iv. 41; xiv. 54. *See* Aliment; Curator; Pupil; Succession; Tutor.

actions by and against, iv. 42, 159; xii. 270, 280.

as apprentice, i. 289.

as parliamentary representatives, xiii. 45.

as partner, ix. 153.

as trustee, xii. 348.

bills of exchange by, ii. 88.

cautionary obligations, ii. 323, 349.

choosing curators, iv. 30.

confirmed as executor, iii. 193.

contract of service, vi. 203.

**MINOR—continued.**

curator to, iv. 27.

*curator ad litem* to, iv. 44; vii. 175.

*curator bonis* to, vii. 197–199.

decree against, iv. 42.

deeds with consent of curators, viii. 360.

diligence against, i. 315; ii. 390; iv. 42.

discharge by, iv. 237.

education of, iv. 33.

executing will, xii. 87; xiii. 192.

expenses against, iv. 42.

franchise, vi. 51.

granting lease, vii. 332.

legacies by, vii. 371.

oath of, ix. 62.

payment of legacy to, xii. 358.

privileges, viii. 360.

privilege in regard to prescription, viii. 367; xii. 314; xiii. 120.

privilege: *non tenetur placiture super hereditate paterna*, viii. 368.

restriction on ground of lesion, vi. 203; vii. 192; viii. 360; ix. 154; xii. 270, 348; xiii. 15, 17, 19.

when competent and how effected, viii. 361.

who entitled, viii. 360.

against whom minor has redress, viii. 366.

effect of, viii. 366.

restitution barred, viii. 364.

restitution only where lesion, viii. 362.

reduction of election, xii. 106.

revocation of deed, x. 340.

savings bank deposits, xi. 90.

searches against, xi. 121.

vicious intromission, xiii. 125.

witness, oath as, ix. 62.

**MINUTE—**

of acceptance by trustees, xii. 351.

of consolidation, iii. 225.

of renewal of inhibition, xi. 116.

book, viii. 368.

clerk of justiciary, ii. 192.

Court of Session, viii. 368.

petitions, ix. 259.

poor roll, admission regulations, ix. 346.

Sheriff Court, viii. 369.

in process, viii. 368.

abandonment of action, i. 1.

amendment of record, i. 71, 220.

## INDEX

MINUTE—*continued.*

in process—

appeal—Circuit Court, i. 250.

proof on view, xiii. 121.

reference to oath, xii. 216.

restriction, i. 14, 218 ; x. 312.

wakening and transference, xii. 299 ; xiii. 146.

of meetings, viii. 369. *See* Evidence.

company, vii. 146.

sequestration, xi. 191.

## MISCONDUCT—

apprentice, i. 290.

presumptions against, x. 8.

workman, xiii. 222.

## MISDEMEANOUR, v. 256.

## MISFEASANCE—

by directors, vii. 137.

## MISPRISION—

of treason, xii. 308.

MISREPRESENTATION, viii. 369. *See*

Error ; Falsehood ; Circumvention ;

Life Insurance ; Fire Insurance.

by stockbroker, xii. 22.

by surveyor, xii. 205.

innocent or fraudulent, vi. 55.

joint stock companies, iv. 236 ; vii. 115.

parole evidence, ix. 143.

partnership, ix. 161, 176.

principal and agent, x. 22, 23.

## MISSILE—

throwing a, i. 329.

## MISSIONARY, i. 141.

## MISSIVES, vi. 224.

sale of heritage, vi. 195 ; xi. 14.

constituting a deed of trust, xii. 334.

parole evidence, ix. 142.

MISTAKE. *See* Error.

## MITIGATION—

of damages, iv. 78, 82, 84.

of punishment, vii. 5.

MOBBING, viii. 370. *See* Breach of the Peace.MODIFICATION. *See* Augmentation ; Expenses.

## MOHAMMEDAN—

oath by, xiii. 215.

## MOLESTATION, ACTION OF, viii. 371.

*See* Ejection and Intrusion.

## MONEY, viii. 372.

deposit of, xiv. 26.

interest on, vii. 36.

MONEY—*continued.*

meaning in wills, viii. 372.

rogue, x. 375.

Scots, xi. 97.

stolen, xiii. 128.

Lenders Act, 1900, xiv. 54.

MONOPOLIES. *See* Patent ; Post Office.

to superior's agents, iii. 176 ; xii. 182.

## MONTH ; CALENDAR, xii. 263, 264.

## MONUMENTS—

access to, xiv. 6.

protection of, xiv. 5.

## MORA, viii. 372.

claiming damages, iv. 71.

condonation implied in, iii. 180.

maritime lien, xi. 108.

personal bar, ii. 30.

prescription of crimes, ix. 409.

sale of goods, xi. 32.

## MORTGAGEE—

of ship, xi. 143 ; xii. 327, 329 ; xiii. 241.

*See* Ship.

## MORTGAGES—

register of, vii. 150.

## MORTIFICATION—

tenure of, xii. 160.

## MORTIS CAUSA, iv. 338.

## MORTUARIES, x. 100.

MOTHER. *See* Aliment ; Custody of Children ; Parent and Child ; Legitim ; Guardianship of Infants Act ; Tutor.

power of appointment, i. 281.

MOTION ; MOTION ROLL, i. 78, 79. *See*

Rolls of Court.

abandonment of action, i. 1.

after final judgment, v. 328.

amendment, i. 214.

approval of auditor's report, xii. 225.

for transference, i. 218.

petitions, ix. 261.

recall of decree in absence, i. 14.

at meetings, i. 214 ; viii. 375.

## MOTOR CARRIAGES, viii. 142.

registration of, xiv. 55.

licensing of drivers, xiv. 56.

reckless driving, xiv. 56.

suspension of licence, xiv. 56.

penalties, xiv. 57.

## MOURNINGS, x. 46 ; xii. 84, 133.

MOVEABLE. *See* Heritable and Moveable ;

Succession ; Vesting.

assignation of corporeal, i. 333.

**MOVEABLE—*continued.***

confiscation of, viii. 393 ; xii. 307.  
defined, xi. 10.  
delivery of, iv. 181.  
growing corn, iii. 314.  
heirship, vi. 177.  
incorporeal, classified, xi. 56.  
missives of sale, xi. 14.  
sale of, xi. 56-58.  
different in, viii. 117.  
*mortis causa* disposition of, xiii. 72.  
perpetuities and accumulations illegal,  
xii. 109, 110.  
possession, ix. 358.  
Sheriff Court, xi. 308.  
surrogatum, xii. 201.  
tutors' powers over, xiii. 14.

**MUIRBURN, viii. 376.****MULTIPLEPOINDING, viii. 377 ; i. 70 ;**  
xii. 390.

nature of action, viii. 377.  
form of summons, viii. 378 ; xii. 146.  
jurisdiction, viii. 378.  
bringing action into Court, viii. 378.  
defences, viii. 378.  
procedure where no defence lodged,  
viii. 379.  
fund *in medio*, viii. 379.  
consignation and exoneration, viii. 380.  
claim in, iii. 46 ; viii. 380.  
procedure no competition, viii. 380.  
procedure competition, viii. 381.  
appointment of factor, viii. 381.  
payment of Government duties, viii. 381.  
amendment of claims and new claims,  
viii. 382.

reduction of decree, viii. 382.  
riding claims, viii. 382.

for exoneration of trustees, viii. 383.

effect on diligence, viii. 383.

expenses, viii. 384.

double distress, iv. 348.

following arrests, i. 317.

in Sheriff Court, xi. 313.

in Small Debt Court, xi. 358.

**MULTURES ; MULTURER, viii. 384. *See***

Thirlage.

abstracted multures, i. 25.

astriction, i. 344.

dry, iv. 362 ; viii. 385.

insucken, vii. 23.

outsucken, viii. 384 ; ix. 100.

**MULTURES ; MULTURER—*continued.***

prescription of, i. 25 ; viii. 385 ; x. 129.

proof, i. 25.

title to sue for, xii. 279.

**MUNICIPAL CORPORATION STOCK,**  
xii. 372.

elections, viii. 385 ; iii. 345. *See* Election

Petition ; Corrupt Practices.

electorate, viii. 385.

time of election, viii. 386.

who may be elected, viii. 386.

returning officer, viii. 386.

duties of town clerk, viii. 387.

nominations, viii. 387.

validity of nomination paper, viii. 388.

withdrawal of candidate, viii. 388.

presiding officers, viii. 388.

agents, viii. 388.

counting the votes, viii. 388.

declaration of poll, viii. 389.

custody and inspection of papers,  
viii. 389.

casual vacancies, viii. 389.

*ad interim* vacancies, viii. 389.

challenge of, viii. 389.

use of schoolrooms, xiv. 57.

corrupt and illegal practices, iii. 337,  
340, 342.

franchise, vi. 53.

law, vii. 306.

**MUNUS PUBLICUM, viii. 390.****MURDER, viii. 391. *See* Homicide.**

assassination, i. 327.

attempt to, i. 346.

by poisoning, viii. 392.

child, iii. 4.

death resulting from serious crime, i. 11 ;  
viii. 392.

personal violence, viii. 391.

indictment, viii. 393.

defence of provocation, vii. 272 ; viii.  
392.

bail, i. 373, 374.

punishment, viii. 393.

tholed an assize, xii. 258.

prescription, ix. 409.

**MUSIC—**

as nuisance, ix. 42.

copyright of, iii. 305.

**MUSSELS, vi. 7 ; xiv. 34. *See* Fishings.**

prescription, ix. 398.

right to, xi. 99 ; xiii. 239.

MUTINY, viii. 394. *See* Army.

duty of crew, xi. 69.

flogging, xiii. 190.

inciting to, xi. 162.

MUTUAL ERROR, v. 92.

gable. *See* Common Gable.

walls, ii. 205.

settlement. *See* Revocability; Settlement; Will.

wills. *See* Wills; Revocation.

MUTUUM, viii. 127, 394.

NAME—

joint stock companies, vii. 103, 104, 152.

change of, viii. 395; x. 264.

of ship, xiii. 241.

NATIONAL BANK OF SCOTLAND LIMITED, i. 380.

notes in circulation, i. 390.

NATIONALITY, viii. 395.

NATIONS, LAW OF, vii. 42.

NATURAL CHILDREN. *See* Bastard.

death, iv. 97.

obligations, ix. 78.

NATURALISATION, i. 187; viii. 398.

shipowners, xiii. 240-243.

NATURE, LAW OF, viii. 400.

NAUTÆ, CAUPONES, STABULARII, vi. 121; viii. 400; x. 349.

NAUTICAL ASSESSORS, i. 332.

NAVAL VOLUNTEER RESERVE, xiv. 58.

NAVIGATION, xi. 97-103.

navigable rivers, x. 350.

NAVY, viii. 403; xiii. 255.

arrestment of pay, i. 313.

criminal law of, xiii. 258.

discharge from, xiii. 258.

naval courts, xiii. 260.

courts-martial, iii. 370.

naval prisoners, xiii. 262.

naval reserve, x. 316.

officers, salvage, xi. 71.

savings bank, xi. 92.

service in, xiii. 256, 258.

NEGLIGENCE, ix. 1.

action founded on, iv. 80, 81.

assault, i. 329.

co-delinquents, iii. 79.

contributory, iii. 268.

carrier, ii. 305.

children or parents, iii. 270; x. 122.

collision between ships, iii. 94-100.

NEGLIGENCE—*continued*.

contributory—*continued*.

dangerous animals, i. 223.

defender primarily, and pursuer subsequently, iii. 269.

fellow-servant of pursuer, iii. 271.

infirm persons, iii. 271.

pursuer and defender concurrently, iii. 270.

pursuer primarily, and defender subsequently, iii. 269.

railway accidents, x. 144, 153, 154.

reparation, x. 283, 290.

culpable homicide, iv. 23.

discharge of cautioner through, ii. 341.

of dentist, xiii. 254.

of medical practitioners, xiii. 254.

of pilot, ix. 271.

of pledgee, ix. 281.

of poor law agent, ix. 349.

of railway company, x. 148.

of servant, x. 300.

of fellow-servant, x. 296, 299.

of surveyor, xiii. 205.

of tutors nominate, xiii. 22.

of workmen, xiii. 222.

principal and agent, x. 21, 22.

personal bar, ii. 27, 30.

reparation, x. 288-303.

*solutium*, xi. 366.

NEGOTIABLE INSTRUMENTS, ix. 4.

distinctive characteristics, ix. 4.

by statute or by custom, ix. 5.

issue by corporation and companies, ix. 6.

quasi-negotiability by personal bar, ix. 7.

acquisition of title, ix. 9.

pledge of, ix. 280.

pledge of, by an agent in fraud of true owner, ix. 10.

right of retention, ix. 11.

stolen, xiii. 128.

bank notes, ix. 12.

bills of exchange and promissory notes,

ii. 80, 81, 91, 94; ix. 12.

cheques, ix. 12.

circular notes, ix. 14.

coupons, ix. 13.

debentures, ix. 12.

delivery order, iv. 188.

deposit receipts, iv. 204; ix. 12.

dividend warrants, ix. 13.

exchequer bills, ix. 13.

- NEGOTIABLE INSTRUMENTS—*contd.***  
 Foreign and Colonial Government bonds, ix. 14.  
 I.O.U.'s, ix. 12.  
 letters of credit, ix. 14.  
 post office orders, ix. 14.  
 scrip, ix. 14.  
 share certificates and blank transfers, ii. 150; ix. 15.  
 share warrants, ix. 15.  
 stock certificates to bearer, ii. 44; ix. 13.
- NETS (FISHING)—**  
 seashore, xi. 100.
- NEUTRAL STATES.** *See* Neutrality.
- NEUTRALITY**, xiii. 263.  
 definition and scope, xiii. 267.  
 absolute duties, xiii. 268.  
 duty of impartiality, xiii. 272.  
 neutralisation of territory, xiii. 273.  
 relative duties, xiii. 268.  
 proclamations of, xiii. 274.  
 rights of belligerents, xiii. 274.
- NEW ACTION**, i. 1.  
 trial, ii. 72; ix. 16.  
   verdict contrary to evidence, ix. 17.  
   excess of damages, ix. 17.  
   other cause essential to justice of ease, ix. 18.  
   *res noviter*, ix. 18.
- NEWSPAPER—**  
 confidential communications, xiv. 20.  
 defamatory advertisement, xiv. 25.  
 contempt of Court, iii. 253.
- NEXT-OF-KIN.** *See* Decrees of Kinship
- NIGHT-POACHING.** *See* Poaching; Game Laws.
- NIGHTWORK—**  
 young persons, v. 224, 244.  
 Factory and Workshop Acts, v. 227.
- NOBILE OFFICIUM—**  
 extent of present exercise, ix. 19.  
 as to statutes, specially in bankruptcy, ix. 20.  
 regarding trusts, ix. 21.  
   English trusts, xii. 371.  
 procedure by petitions to Inner House, ix. 22.
- NOBILITY.** *See* Peerage; Precedence; Dignities.
- NOISE (NUISANCE)**, ix. 41.
- NOMINATE AND INNOMINATE RIGHTS**, vi. 366.
- NOMINATE TUTOR.** *See* Tutor.
- NOMINATION OF CANDIDATE.** *See* Appointment.  
 county council, iii. 366.  
 municipal, viii. 387.  
 parish council, ix. 123.  
 parliamentary, ix. 132.  
 School Board, xi. 95.  
 universiites, xiii. 45.
- NON-ENTRY.** *See* Entry with Superiors; Superiority.
- NON MEMINI.** *See* Oath on Reference.
- NON-NATURAL USE OF PROPERTY**, ix. 39; x. 292.
- NON-NAVIGABLE RIVERS**, x. 353.
- NON NUMERATAE PECUNIAE**, v. 132.
- NON VALENS AGERE**, ix. 406.
- NORTH OF SCOTLAND BANK LTD.**, i. 380.  
 notes in circulation, i. 390.
- NOT GUILTY**, xiii. 60.
- NOT PROVEN**, xii. 258; xiii. 60.
- NOTARIAL DOCQUET**, xiii. 196.  
 execution of deeds, iv. 138.  
   of will, xiii. 196.  
 intimations, i. 334.
- NOTARIAL INSTRUMENT**, ix. 24; iv. 87.  
 under conveyancing statutes, ix. 25. *See* Infentment.  
   nature and functions, ix. 25.  
 if a basis for prescription, ix. 25.  
   adjudger, ix. 26.  
   disponee, ix. 26, 27.  
   heir, ix. 26.  
 when necessary, ix. 27.  
 real burdens in general dispositions, ix. 28.  
 descriptions in, ix. 28.  
   consolidated estates, ix. 29.  
   superiorities, ix. 29.  
 specification of burdens, ix. 29.  
 specification of personal obligations, ix. 30.  
   unrecorded bond, ix. 30.  
   recorded security, ix. 30.  
   unrecorded assignation, ix. 30.  
 where part of property sold, ix. 30.  
 securities partly assigned or discharged, ix. 30.  
   where granted but not recorded, ix. 31.  
 specification of general disposition, ix. 31.  
 deduction of title, ix. 31.  
 survivorship, ix. 32.

NOTARIAL INSTRUMENT—*continued.*

erasures in, v. 88.  
 forms of, v. 316.  
 recording of, x. 255.  
 Stamp Acts, xi. 462.

**NOTARY PUBLIC—**

appointment of, ix. 23, 32 ; vii. 308, 313.  
 bill signed by, xii. 142.  
 blind persons, ii. 153.  
 bond and disposition in security, ii. 177.  
 change of name, ix. 23.  
 docquet by, vi. 224.  
 execution of deeds, iv. 138–144 ; xiv. 25.  
 execution of will, xiii. 196, 198.  
 fictitious narrative, vi. 39.  
 interested, vii. 35.  
 notarial intimations, i. 335.  
 requisition and protest, ii. 177, 178 ;  
     xii. 142.  
 Stamp Act, xi. 417, 444, 456.

**NOTE, ix. 34.**

appeal to Court of Session, i. 260.  
 appeal to Sheriff, i. 278.  
 bought and sold, ii. 202.  
 of suspension, xii. 207, 212.  
     amendment of, xii. 215.  
     passing or refusing, xii. 214.  
     procedure, xii. 217.  
     second note, xii. 215.  
 of pleas in law, xii. 218.  
 reponing, i. 16.  
 transmission of process, xii. 300.  
 circular, iii. 21.  
 judges, vii. 169.  
 used by witnesses, xiii. 220.

**NOTICE—**

of abandonment, marine insurance, i. 6.  
**of Accident Act—**

citation of witnesses, i. 35.  
 commissioner, i. 35.  
 commissioner's report, i. 35.  
 employments dealt with, i. 35.  
 notice of accident, i. 35.  
 investigations, i. 35.  
 expenses of investigation, i. 35.  
 penalty, i. 35.  
 witnesses, i. 35.

of appeal to House of Lords, i. 269.  
 of appeal to High Court, i. 265.  
 of claim in agricultural references, i. 181.  
 of claim of damages, iv. 71.  
 change of ownership, xii. 163, 164.

**NOTICE—*continued.***

of dishonour of bill, ii. 77, 84, 99.  
 dispensed with, ii. 101.  
 of dissolution of partnership, ix. 169, 171.  
 of jury trial, vii. 236.  
 of meetings, joint stock companies, vii. 144.  
 of private bill, x. 35.  
 principal and agent, x. 23.  
 to receiver of wrecks, xiii. 225.  
 to remove, xii. 236.  
 to treat, vii. 287.  
 under Employers' Liability Act, x. 300.  
 under Lands Clauses Acts, vii. 282–299.

**NOTIFICATION—**

of infectious diseases, viii. 319.

**NOTING.** *See* Bill of Exchange.**NOTOUR BANKRUPTCY.** *See* Bank-ruptey.**NOVATION, ix. 34, 84.****NOVODAMUS, CHARTER OF, ix. 36 ;**  
     ii. 396 ; xii. 18, 33, 155.**NOXIOUS GASES, ALKALI WORKS,**  
     i. 206.**NUISANCE, ix. 37.** *See* Alkali Works ;

Burying-Place ; Explosive Substances ;  
 River Pollution ; Smoke.

scope and characteristics, ix. 38.

restrictions in title, ix. 49.

special air pollution, ix. 40.

dangerous proceedings, ix. 42.

offensive proceedings, ix. 43.

unusual proceedings, ix. 43.

water pollution, ix. 39.

unnatural heat, ix. 42.

unusual noise or vibration, ix. 41.

legal procedure, ix. 45.

pursuer and defender, ix. 44.

defences, ix. 47.

under Public Acts, ix. 51.

legal procedure, ix. 54.

pursuer and defender, ix. 52.

county council by-laws, ix. 58.

**NULLITY OF MARRIAGE.** *See* Marriage.**NUNCUPATIVE LEGACIES ; TESTAMENT,**  
     vii. 370 ; xii. 88, 109.**OATH.** *See* Affirmation.

apprehension of criminals, i. 287 ; xiii.  
     159.

by atheist, i. 345.

by Chinaman, xiii. 215.

by county constables, iii. 234.

**OATH—continued.**

by husband and wife, i. 240.  
 by minor, i. 162.  
 by Mohammedian, xiii. 215.  
 by pupil, i. 162.  
*de fideli administratione*, ix. 60; xii. 203; xiii. 7.  
 in bankruptcy, ix. 58; xi. 185.  
 rectification of oaths, xi. 186.  
 requisites in different cases, ix. 59; xi. 174, 183.  
 assignees, ix. 59; xi. 185.  
 creditor a corporation, ix. 59; xi. 185.  
 creditor resident in United Kingdom, ix. 59; xi. 185.  
 creditor out of United Kingdom, ix. 59; xi. 185.  
 executors, ix. 59; xi. 185.  
 factors and agents, ix. 59; xi. 185.  
 partnership, ix. 59; xi. 184.  
 trustees, ix. 59; xi. 185.  
 creditors under age and incapacitated, ix. 59; xi. 185.  
 judicial, ix. 75.  
 of abjuration, i. 11.  
 of allegiance, i. 207; iv. 6; ix. 75.  
 Parliament, members of, ix. 128.  
 of calumny, ii. 280; ix. 59.  
 incapax, xiii. 27.  
 of credulity, xi. 185.  
 of jurors—  
   in civil cases, ix. 60.  
   in criminal cases, ix. 61.  
 of witnesses—  
   natural form and effect, ix. 61.  
   affirmation in lieu, ix. 61; xiii. 207.  
   to whom administered, ix. 62.  
 special cases forbidden or allowed, ix. 63.  
 prohibition against administering, ix. 63.  
 official, ix. 75.  
 on reference—  
   its nature, ix. 63.  
   form, ix. 64.  
   when reference incompetent, ix. 65.  
   at what stage proceedings made, ix. 66; xiii. 145.  
   when case referred in part only, ix. 67.  
 reference retracted, ix. 67.  
 deferring, ix. 67.  
 to whom made, ix. 68.

**OATH—continued.**

examination and re-examination, ix.

70.

interpretation and effect, ix. 71.

qualified, ix. 72.

party held *pro confesso*, ix. 74.

promissory, ix. 75.

to inventories of personal estate, ix. 60; xiv. 31.

unlawful, ix. 77.

**OBITER DICTUM**, ix. 77.**OBJECTIONS—**

to arbiter, i. 295.

to auditor's report, xii. 223.

to composition contract, xi. 237.

to judicial cautioner, ii. 350.

to marriage, ii. 26.

to petition for cessio, ii. 362.

police complaint, ix. 317.

to registration of voters, x. 272.

to summary prosecutions, iii. 390.

to trustee in sequestration, xi. 194.

**OBLIGATION**, ix. 78; iii. 176, 274. *See*

Cautionary Obligations.

*ex lege*, ix. 78.

restitution, ix. 78.

recompense, ix. 79.

reparation, ix. 79.

*ex contractu*, ix. 79.

nature, ix. 79.

division, ix. 79.

what is essential to constitute, ix. 80; 89.

construction or interpretation, ix. 82.

illegal and immoral, ix. 82.

contracts *contra bonos mores*, ix. 83.

contracts inconsistent with public policy, ix. 83.

illegal, ix. 82.

extinction or discharge, ix. 83; iii. 7.

by performance, ix. 83, 234.

by consent, ix. 84, 104.

by operation of law, ix. 84.

breach of contract, ix. 84.

prescription, ix. 405.

**OBSCENE WORKS, PICTURES, ETC.**, ix. 87. *See* Indecent.**OCCUPATIO ; OCCUPANCY**, ix. 88.**OCCUPANT—**

franchise, vi. 47.

rating, x. 183.

inhabited house duty, vi. 348.

OFFENCES. *See Crime.*

successive occupancy, vi. 51.  
adulteration of foods, xi. 59.  
committed at sea, iii. 386; vii. 271;  
xiii. 277.  
birds, protection of wild, ii. 139.  
blasphemy, ii. 151.  
by seamen, xi. 106.  
coining, iii. 84.  
contagious diseases (animals), iii. 250;  
iv. 63.  
cruelty to animals, iv. 11.  
cruelty to children, iv. 16.  
Customs Acts, iv. 60.  
friendly societies, vi. 85, 88.  
Inebriates Act, xiii. 245.  
Merchandise Marks Act, viii. 325.  
post office, ix. 367.  
railway passengers, x. 157.  
surveyor of taxes, xii. 205.  
tramway, xiii. 288, 289.  
trawling, xii. 301-305.  
under influence of drink, xiii. 245, 246.

## OFFENDER—

warrant to arrest, xiii. 159-161.  
whipping juvenile, xiii. 189.  
fugitive, vi. 95.

## OFFENSIVE TRADES, x. 95.

OFFER AND ACCEPTANCE, ix. 89;  
viii. 143; x. 67.

by advertisement, i. 139.  
by auction, i. 349.

## OFFICE, ix. 91; viii. 390.

joint stock companies, vii. 104, 150.

OFFICER. *See Sheriff Officer and Messenger-at-Arms.*

## military—

billeting, ii. 136.  
servant's licence, i. 309.  
non-commissioned, flogging, xiii. 190.  
savings bank, xi. 92.

of State, ix. 93.

## OFFICIAL BOOKS—

as evidence, ii. 190.

## OFFICIAL HOUSES—

income tax, vi. 274.

## OFFICIALS—

Faculty of Advocates, i. 145.  
public, ix. 91; viii. 390.  
bankruptcy of, ii. 365.  
statutory protection, x. 74.

OLD AND NEW EXTENT. *See Extent.*

## OMISSIONS—

by administrator-in-law, xiii. 18.  
curator, iv. 38.  
father as tutor, xiii. 2.  
trustees, xii. 383.  
tutor-at-law, xii. 25.  
tutors nominate, xiii. 7, 9, 17, 18.

*ONERIS FERENDI, SERVITUDE*, ix. 94.

## ONEROUS DEEDS, iii. 217.

*ONUS PROBANDI*, i. 160; x. 3.

## OPEN CHARTERS, ix. 95.

OPEN DOORS, AT TRIALS, iv. 347.  
letters of, ix. 96.

OPEN POLICY, viii. 222. *See Marine Insurance.*

OPEN RECORD. *See Record.*

OPENING LETTERS, x. 370, 371. *See Post Office Offences.*

## OPINION EVIDENCE, iii. 144; ix. 96.

OPPRESSION, xii. 221.  
by Sheriff, i. 257.

ORDAINED SURVEYOR. *See Surveyor.*

ORDINARY, LORD, ix. 99. *See Lord Ordinary.*

## ORKNEY AND SHETLAND, i. 262, 374.

## OUTER HEBRIDES, i. 374.

OUTER HOUSE. *See Court of Session.*

OUTLAWRY, iv. 97; v. 96; vi. 93;  
ix. 100, 241; xiii. 212.

## OUTSUCKEN MULTURES, ix. 100.

## OVERDRAFTS—

bank, i. 383, 386. *See Bank.*  
interest on, i. 386.

## OVERHEATING—

fire insurance, v. 343.

## OVERSMAN, ix. 101.

agricultural references, i. 183.

as witness, i. 303.

award, i. 368.

no nomination, i. 298.

OVER SUPERIOR. *See Superiority.*

consolidation, iii. 228.

## OVERTIME, v. 243, 244.

Factory and Workshop Acts, v. 226.

## OVERTURE, i. 55; iii. 16.

## OWNERSHIP—

copyright, iii. 290-314.

in mines, viii. 340. *See Mines.*

march fences, ix. 275, 276.

reputed—

possession, arising from, ix. 358.

sale of goods, xi. 38.

**OWNERSHIP—continued.**

runrig, x. 389.  
transfer of, xi. 12.

**OXEN—**

dangerous, i. 223, 224.  
**OYSTER BEDS—**  
right to, xi. 99.  
fishing, vi. 7.  
owner of, xi. 99.  
theft of, xii. 245.

**PACTUM**, ix. 102.

*de non petendo*, ix. 104.  
*de quota litis*, ii. 273; ix. 104.  
*de retrovendendo*, ix. 105.  
*illicitum*, vi. 253; ix. 103.

**PAINTINGS AND PICTURES**, ix. 106.

questions as to property in materials, ix. 106.  
questions as to heritable and moveable nature, ix. 107; xii. 52.

questions of copyright, iii. 308; ix. 108.

**PAISLEY—**

tenure of booking, ii. 194; x. 257.  
register of booking, xi. 111, 119;

**PANDECTS**, x. 380.**PANEL**, ix. 108.

plea of, ix. 276. *See* Criminal Prosecution; Indictment.

**PARAMOUR—**

marriage with, i. 138; viii. 252.  
as donee, i. 138.

**PARAPHERNALIA**, ix. 108.**PARDON**, ix. 110.**PARENT AND CHILD**, ix. 110. *See*

Administrator-in-Law; Affiliation; Bastard; Curator; Custody of Children; Legitim; Legitimation; Foris-familiation; Minor; Pupil; Tutor; Posthumous Child.

aliment of child, i. 192; vi. 42; xiv. 3.

aliment of parent, i. 197, 198.

allocation of conquest, iii. 213.

assault on parent, i. 328.

chastisement, iii. 285; xiii. 189.

contributory negligence, iii. 270.

cursing of parent, iv. 48.

delict and quasi-delict of child, ix. 111.

destinations to, iii. 207; viii. 119; xii. 71.

duties of child, ix. 111.

**PARENT AND CHILD—continued.**

marriage-contract provisions, viii. 274-294.

parish council powers, ix. 117.

*pater est quem nuptiae demonstrant*, ix. 228.

poor law obligations, ix. 339.

powers of parent, ix. 111.

provisions to, i. 339; vii. 243, 247.

reparation, x. 286.

right of diligence against father, vii. 246.

vaccination, xiii. 56.

**PARISH**, ix. 112.

assessment. *See* Rating.

disjunction and annexation, iv. 248.

disjunction and erection, iv. 249.

**PARISH COUNCIL**, ix. 113. *See* Poor Law; County Council; Standing Joint Committee; Rating.

constitution, ix. 113.

business and proceedings, ix. 114.

chairman, ix. 114.

clerk, ix. 115, 331, 332.

meetings, ix. 114.

quorum, ix. 114.

medical officer, ix. 332.

powers and duties, ix. 116.

conferred generally, ix. 116.

conferred on, or rural and landward committees, ix. 119.

rating, x. 188.

elections, ix. 121.

wards, ix. 121.

number of councillors, ix. 122.

qualification of councillors, ix. 122.

electors, vi. 54; ix. 122.

date, ix. 122.

returning officer, ix. 122.

notice and nomination, ix. 123.

the poll, ix. 123.

casual vacancies, ix. 124.

expenses, ix. 124.

minister. *See* Minister.

trusts, ix. 116.

wards, ix. 121.

*quoad sacra*, ix. 124.

erection, ix. 124.

effect of erection, ix. 125.

**PARLIAMENT**, ix. 125. *See* House of Commons; Lords, House of; Private Bill.

omnipotence of, ix. 126.

officers, ix. 126.

PARLIAMENT—*continued.*

writ of summons, ix. 126.  
 constituencies, ix. 127.  
 adjournment, prorogation, dissolution, iv. 299 ; ix. 127.  
 journals of, vii. 168.  
 members of, ix. 128. *See* Parliamentary Election ; Franchise.  
 commission in the army, iii. 105.  
 Crown pensioner, ix. 253.  
 disqualifications, ix. 128.  
 privileges, ix. 129.  
 retiral of, ix. 129.  
 apprehension of, ix. 129.  
 bankrupt, ii. 365.  
 as witnesses, xiii. 213.  
 yeoman, xiii. 229.  
 Chiltern Hundreds, iii. 5.

**PARLIAMENTARY BURGH**, ii. 258.  
 churches, ix. 130. *See* Disjunction and Erection ; Parish *quoad sacra*.

**PARLIAMENTARY ELECTIONS, PROCEDURE AT**, ix. 131. *See* Franchise ; Election Petition.

procedure at—  
 returning officer, ix. 131.  
 writ, ix. 131.  
 notice of election, ix. 131.  
 agents, ix. 132.  
 nomination, ix. 132.  
 security, ix. 133.  
 presiding officers and clerks, ix. 133.  
 ballot papers, ix. 133.  
 tendered ballot papers, ix. 133.  
 poll, ix. 134.  
 polling booth, ix. 134.  
 tendered votes, ix. 134.  
 spoilt papers, ix. 135.  
 persons disqualified from voting, ix. 135.  
 counting the votes, ix. 136.  
 doubtful votes, ix. 136.  
 equality of votes, ix. 136.  
 recount, ix. 137.  
 indorsing and return of writ, ix. 137.  
 returns and custody of documents, ix. 137.  
 effect of mistakes, ix. 138.  
 offences, ix. 138.  
 personation, ix. 137.  
 university elections, xiii. 45.

**PAROCHIAL BOARD**, ix. 138. *See* Parish Council.  
 relief. *See* Poor ; Poor Law.

**PAROLE EVIDENCE**, ii. 60 ; ix. 139–148. *See* Evidence.

**PARTIALLY IMPLEMENTED DECREE**.  
 recall of decree in absence, i. 16.  
 reponing against, i. 17.

**PARTIBUS**, ix. 149 ; ii. 278.

**PARTICEPS CRIMINIS**. *See* Accessary ; Art and Part ; Accomplice.

**PARTICULAR REGISTER OF SASINES**, xi. 111, 119.

**PARTNERSHIP**, ix. 149. *See* Joint Adventure.

nature of, ix. 149.

persons disqualified as partners, ix. 143 ; xiii. 15.  
 meaning of “firm,” ix. 155.  
 dealings with third parties, ix. 157.  
 agency of partners, ix. 157.  
 admissions and representations, ix. 159.  
 liability of partners, iii. 287 ; ix. 161.  
 persons liable as partners, ix. 162.  
 liability of incoming partner, ix. 162.  
 liability of outgoing partners, ix. 163.  
 cautionary obligations, ii. 323, 346 ; ix. 150, 164.  
 contributions of stock or capital, ix. 165.  
 profits and losses, ix. 167.  
 management, ix. 167.  
 accounting between partners, ix. 168.  
 apprentices, i. 290.  
 arrestments, i. 322 ; ix. 156.  
 assignation of rights, xi. 148.  
 bills of exchange, ii. 89, 120.  
 books as evidence of, ii. 191.  
 damages, penal and liquidate, ix. 244.  
 death of partner, iv. 97.  
*delectus personæ*, iv. 169.  
 disposal of goodwill, vi. 134.  
 firm name, vi. 2.  
 fraud of partner, vi. 60.  
 heritable interests, vi. 181 ; ix. 166.  
 income tax, vi. 294.  
 infringement of patents, ix. 226.  
 insolvency, ii. 1 ; ix. 170.  
 intimation of assignation, i. 335.  
 joint right in property, vii. 93 ; xii. 335.  
 law agents entering into, vii. 324.  
 leases, vii. 334.  
 leases by one partner, xii. 339.

PARTNERSHIP—*continued.*

married women as partners, viii. 298 ; ix. 154.  
 novation, ix. 35.  
 oath in bankruptcy, ix. 59.  
 oath on reference, ix. 68.  
 partners becoming insane, vii. 4 ; xi. 170.  
 slander, vii. 95.  
 trustees as, xii. 388.  
 trustees of deceased partner, xii. 278.  
 title to sue, iv. 161 ; vi. 2 ; xii. 278.  
 termination or dissolution, ix. 169.  
     when takes place, ix. 169.  
     third parties, ix. 171.  
     effect on contracts, ix. 172.  
     winding-up, ix. 172.  
     firm's assets, ix. 173.  
     goodwill, ix. 174.  
     apportionment of premium, ix. 176.  
     fraud or misrepresentation, ix. 176.  
     profits made after, ix. 176.  
     retiring partner's share, ix. 177.  
     final settlement, ix. 177.  
 bankruptcy, ii. 5 ; ix. 178 ; xi. 176.  
     of partner, ii. 5 ; vi. 2 ; ix. 178.  
     of firm, ix. 179.  
     of firm and partners, i. 203 ; ix. 179.  
     distribution of assets, ix. 180.  
     sequestration or cessio, ix. 180.  
     ranking of creditors, ix. 181.  
     discharge, ix. 182.

## PARTS AND PERTINENTS, ix. 182.

parts, ix. 182.  
 pertinents, ix. 183.  
 contract, ix. 183.  
     water rights, ix. 183.  
     teinds, ix. 183.  
*regalia minora*, vi. 125 ; ix. 183.  
 moveable effects, ix. 184.  
 gables, ix. 185.  
 minerals in connection with reservation, ix. 185.  
 timber, xii. 259.  
 prescriptive right, ix. 186.  
     title, ix. 186.  
     possession, ix. 187, 397–403.

of barony, xiii. 239.

mill, viii. 336.

## PASS-BOOK, BANK, i. 380.

## PASSAGE—

common, ii. 133.

## PASSENGER STEAMERS, xi. 331.

## PASSENGERS—

carriage of, ii. 304 ; x. 152.  
 luggage, ii. 303 ; x. 151.  
 protection of, x. 159.  
 railway ticket, x. 157.  
 salvage, xi. 69.  
 ship, xi. 331.

## PASSIVE TITLES IN HERITAGE, ix.

187, 195 ; xii. 133, 134 ; xiii. 17.

*gestio pro hærede*, ix. 187.

intromission with rents, ix. 188.  
 intromission with writs and evidents, ix. 188.  
 intromission with heirship moveables, ix. 189.

limited, ix. 191.

statutory extensions, ix. 191.

under Act, 1695, ix. 192.

*præceptio hæreditatio*, ix. 195.

## PASSPORTS—

where unnecessary, xiii. 276.  
 stamp duty, xi. 456.

## PASTURAGE—

common, iii. 136 ; xi. 374.  
 of cattle, vi. 220.

## PATENT ; LETTERS PATENT FOR INVENTIONS, ix. 199 ; viii. 325.

*See* Armorial Bearings.

inventions in foreign state or colony, xiv. 58.

compulsory licences, xiv. 58.

revocation of, xiv. 58.

assignation of, i. 338.

monopolies excepted, ix. 199, 200.

succession, xii. 42.

reduction of, ix. 226 ; xii. 280.

## infringement—

action against licences, ix. 227.

assessor in actions, i. 332.

breach of interdict, ix. 225.

interdict and damages, ix. 223, 225.

measure of damages, i. 83.

note of suspension and interdict, ix. 203.

pleas in law, ix. 219.

procedure, ix. 220, 221.

proof of, ix. 221.

statement of facts, etc., ix. 204–

219.

threats of action, ix. 227.

expenses, ix. 223.

*PATER EST QUEM NUPTIE DEMONSTRANT*, ix. 228.

PATERNITY, i. 157; ix. 228.

PATRONAGE, ix. 231; vii. 248; xii. 49, 243.

PAUPER. *See* Parish Council; Poor Law. acquiring estate, i. 193. action by, ii. 353; ix. 349. admission to Poor's Roll, ix. 344. appeal to House of Lords, i. 272. lunatics, viii. 172; ix. 343. relief, ix. 335. removal of— to England or Ireland, ix. 343. to parish of settlement, ix. 341. reponing against decree, x. 307. savings hidden by, ix. 339. settlement of, xi. 303.

PAWNBROKING, ix. 231. certificates, ix. 233, 234. executors carrying on business, ix. 232, 234. liability of pawnier, ix. 233. licence, ix. 233. Money-Lenders Act, 1900, xiv. 54. pawn tickets, ix. 232. penalties, ix. 234.

PAYMENT, ix. 234. *See* Bill of Exchange. accommodation bill. anticipated, vii. 408. *bond fide*, ii. 161. by cheque, x. 16. by stockbroker, xii. 20. by tutor, xiii. 11, 14. cash, bankruptcy, ii. 11. conditional, xi. 28. effect of arrestment on, i. 316. in error, v. 94. instalment, vii. 21. of casualty, xii. 168. of election bills, iii. 334, 335. of composition, xi. 239. of deposit receipt, iv. 203. of dividends in sequestrations, xi. 227. of feu-duty, xii. 161, 167. of legacies, vii. 388; xii. 358. of trustees' debts, xii. 356. presumptions of, iii. 7; x. 5. proof of, xi. 28. repetition, x. 303. actions for, xi. 312.

PAYMENT—*continued*. termly, i. 243, 284, 314. to broker, ii. 228. to builders, xii. 204. to tutors nominate, xiii. 12.

PEACE. *See* Breach of the Peace; Justice of the Peace. clerk of the, iii. 57.

PECULIUM, ix. 237.

PEDLAR, ix. 239. *See* Pawnbroking Vagrant. county assessments, x. 197, 198.

PEER; PEERAGE, ix. 239. *See* Attainder Forfeiture. abeyance, i. 10. apprehension of, ix. 241. application for bail, i. 374. as witness, ix. 62, 242. bankruptcy of, ii. 365; ix. 241, 242; xi. 251. cannot sit in House of Commons, ix. 128, 241. criminal prosecution, ix. 241. designation in summons, etc., iv. 227. franchise, vi. 51, 54. impeachment of, vi. 255. Union Roll, ix. 240. election of Scottish representative, ix. 242.

PEERESS, ix. 242.

PENAL AND LIQUIDATE, ix. 243. damages limited by penalty, ix. 244.

PENAL SERVITUDE, ix. 245. statutory authority, ix. 245. sentence, ix. 245. discipline, ix. 246. licences, ix. 246. forfeiture and revocation of licences, ix. 247.

PENALTIES (STATUTORY), ix. 247. general considerations, ix. 248. Summary Procedure Act, ix. 249. forum, ix. 249. title to sue for, ix. 249; x. 111. application of penalties, ix. 249. specification of penalty in charge, ix. 250. infliction, restriction, and mitigation, ix. 250. under particular Acts, ix. 251.

PENCIL MARKINGS IN WILLS, xii. 91, 94.

- PENDENTE LITE, NIHIL INNOVANDUM*, ix. 252. *See* Litigiosity.
- PENNY SAVINGS BANK*. *See* Bank.
- PENSION*, ix. 253.
- arrestment of Crown, i. 314; ix. 253.
  - arresting professors, i. 234.
  - bankruptcy of pensioner, i. 204; xi. 209.
  - bankruptcy of Crown pensioner, ix. 253.
  - to constables, iii. 235.
  - to volunteers, xiii. 139.
- PENURIA TESTIUM*, ix. 253.
- PERAMBULATION*, ix. 254.
- PER CAPITA*, ix. 254; vii. 381; xii. 77, 116, 117.
- PERICULUM*, x. 346.
- PERJURY*, ix. 255.
- definition of, ix. 255.
  - corpus delicti*, iii. 320.
  - statement upon oath, ix. 255.
  - the falsehood, ix. 255.
  - proof, ix. 256.
  - punishment, ix. 256, 257.
  - modus in libel*, ix. 257.
  - prevarication upon oath, ix. 257.
  - subornation of, ix. 257.
  - practice to obtain false evidence, ix. 258.
  - false affidavits, i. 157.
  - evidence before referee, i. 183.
  - Marriage Notice Act, ii. 26.
- PERMANENT*—
- streams, xiii. 175, 177.
- PERMUTATION*, ii. 35; v. 116.
- PERPETUITIES AND ACCUMULATIONS*, xii. 109, 110, 111.
- PERSONAL BAR OR EXCEPTION*. *See* Bar (Personal).
- PERSONAL LIABILITY*. *See* Liability.
- PERSONAL OBLIGATION*. *See* Obligation.
- PERSONAL REGISTERS*—
- period of search, xi. 114, 115.
- PERSONAL RIGHTS*, ix. 258.
- as distinct from heritable, ix. 258.
  - claim of damages, x. 285.
  - deponer under absolute disposition, i. 20.
  - jus crediti* to heritage, ix. 258.
- PERSONAL SERVICES*, ix. 259.
- PERSONATION*—
- by voters, iii. 330; ix. 137.
- PER STIRPES*, vii. 381; ix. 254; xii. 77, 116, 117.
- PERTINENTS*. *See* Parts and Pertinent.
- PETITION*, ix. 259; i. 72; viii. 165. *See* Forms; *Nobile officium*.
- Distribution of Business Act, ix. 100, 260.
  - expenses omitted, i. 15.
  - for admission as law agent, vii. 312.
  - for breach of interdict, ii. 208.
  - for custody of children, iv. 56.
  - for excommunication, v. 125.
  - for sequestration, i. 70; xi. 172.
  - for recall of, xi. 177.
  - for special powers—
    - judicial factors, vii. 186-193, 196.
    - trustees, xii. 364-371.
    - tutors, xiii. 18-20.  - form, ix. 259.
  - Inner House petitions, ix. 22, 259, 261.
  - intimation of, vii. 48; ix. 262.
  - joint stock company petitions, vii. 109, 141, 148, 153, 154, 164, 165.
  - Outer House petitions, ix. 260.
  - presumption of life limitation, xii. 39.
  - procedure, ix. 261, 262.
  - to apply judgment, i. 273.
- PETITION AND COMPLAINT*, ix. 262.
- PETITORY ACTIONS*, ix. 263.
- PETROLEUM*, ix. 263.
- PEW*. *See* Seats in Churches.
- PHARMACOPÆIA*, ix. 265; xiii. 254; xiv. 59.
- PHARMACY ACTS; PHARMACEUTICAL*, ix. 264; xiv. 59.
- PHOTOGRAPHS*—
- as evidence, ii. 61; vi. 252.
  - copyright, iii. 308.
- PHYSICIANS*. *See* Medical Practitioners.
- PICKETING*, xii. 296, 298.
- PICTURES*. *See* Paintings and Pictures; Indecent Pictures.
- PIER*. *See* Ports and Harbours.
- dues, xi. 101.
  - erection of, ix. 354.
  - proprietor building, xi. 101.
  - upholding of, xi. 102.
- PIGEONS*, ix. 265.
- PILOT*, ix. 268.
- collision, iii. 96; ix. 271.
  - river, ix. 269.
  - seaworthiness of ship, xi. 134.
  - salvage, xi. 69, 70, 84.
- PIPES*—
- altering course, xiii. 284.
  - gas, vi. 117.

PIPES—*continued.*

laying of, xiii. 180, 181.  
water, xiii. 180–183.

## PIRACY, ix. 272.

## PIRATES—

marine insurance, viii. 232.  
salvage, xi. 69, 71.

## PISTOLS ACT, 1903, xiv. 60.

## PLAGIUM, ix. 272.

reset of, x. 317.

## PLAQUE.

cattle, iii. 243–251.

PLANS. *See* Maps and Plans.

## PLANTING AND ENCLOSING OF

LANDS, ix. 272. *See* Marches;  
Fences.

planting, ix. 272.

enclosing, ix. 273.

common law, ix. 273.

under Act, 1661, ix. 273.

straightening marches, ix. 275.

march fences, ix. 275.

ownership and upkeep of march  
fences, ix. 275.

fences in special localities, ix. 275.

public roads, ix. 276.

railways, ix. 275.

pits, quarries, shafts, etc., ix. 276.

## PLAYS, LICENSING, ii. 381.

## PLEA OF PANEL, ix. 276.

## PLEADING, ix. 277.

diet, iii. 382.

## PLEAS—

buying of, ii. 273.

criminal—

alibi, i. 186.

in bar of trial, ii. 31; iii. 382; vii. 4;  
viii. 174.

irrelevancy, iii. 382, 391; vi. 320.

in law, ix. 277; i. 74, 82. *See* Title to  
Sue; Prescription.

all parties not called, i. 198; iv. 157;  
x. 282.

collusion, ii. 280; iii. 100; iv. 309,  
313.

*compensatio injuriarum*, iii. 145; iv. 84.

compensation, iii. 156.

competent and omitted, iii. 156.

contributory negligence, iii. 268.

*damnnum fatale*, iv. 85.

declinature of judge, iv. 122, 156.

deathbed, iv. 98.

PLEAS—*continued.*

in law—*continued.*

dole, iv. 316.

fault of fellow-servant, v. 256.

*forum non conveniens*, vi. 43; vii. 228.

irrelevancy, ii. 46; iv. 156.

incompetency, iv. 156; vi. 309.

*jus tertii*, vii. 259.

*lis alibi pendens*, iii. 257; iv. 157;  
viii. 123.

personal bar, ii. 27.

of recompensation, x. 228.

*rei interventus*, x. 275.

*res judicata*, x. 311.

want of specification, iv. 157.

no title to sue, iv. 157.

of the Crown, iv. 11.

PLEDGE, iv. 186; ix. 278. *See* Pawn-  
broking.

distinguished from other securities, ix.  
278.

constitution of, ix. 279.

subject of, ix. 280.

rights of pledgee, ix. 281; xi. 144.

retention for other debts, ix. 282.

maintenance of possession, ix. 282.

title of pledgee, ix. 282.

sub-pledge, ix. 284.

of documents of title, ix. 284; iv. 191; v.  
204–210; x. 333.

by agents, i. 170; x. 22.

prescription, x. 129.

## PLENISHING ORDER, vi. 247.

## PLEURO-PNEUMONIA, iii. 244.

PLOUGH GOODS, ix. 285. *See* Poinding.PLOUGHGATE OF LAND, ix. 285. *See*  
Extent.

## POACHING, ix. 286; i. 226.

day, ix. 289.

fish, vi. 22.

in the Solway, vi. 20.

night, vi. 22; ix. 287, 288.

on the Tweed, vi. 20.

Prevention Act, ix. 291.

POINDING, i. 70; ix. 292. *See* Suspen-  
sion.

subject which may be poinded, ix. 294;  
xi. 184.

competency, iv. 234; ix. 295.

competing diligences, ix. 296.

abuse of civil process, iii. 44; ix. 297;  
x. 285.

**POINDING**—*continued.*

appraisement, i. 285; ix. 293.  
charge before, ii. 392.  
creditors defending, xii. 281.  
execution of, v. 139.  
effect of sequestration on, ix. 296,  
297.

Small Debts Act, 1837, xi. 357.  
by seller of goods in his possession,  
xi. 46, 50.  
for Crown debts, v. 187.  
of corn, iii. 314.  
of plough goods, ix. 285.  
stray cattle, ix. 298; xiv. 60.

**POINDING OF THE GROUND**, ix. 298;  
iv. 233.

parties entitled to raise action, ix. 299;  
ii. 242; iv. 106–109.

parties who must be called as defenders,  
ix. 300.

effect, and subjects poindable, ix. 300,  
302.

competing diligences, ix. 301.  
effect of sequestration, xi. 199.

**POISON**, ix. 303.

arsenic, ix. 303.  
sale of, ix. 303; xi. 64.

**POISONED FLESH**, ix. 304.**POISONED GRAIN**, ix. 304.**POISONING**, ix. 304; i. 346.**POLICE**, ix. 304.

Acts of Parliament affecting the duties  
of, ix. 308.

burgh, ii. 259; xiv. 61.

Commissioners of, iii. 115.

reparation, x. 301.

obstructing the, x. 11.

supervision, x. 10.

**POLICE COURT**, ix. 311; ii. 210.

constitution of, ix. 311.

burgh prosecutor, ix. 311.

assessor, i. 333.

clerk of, ix. 312.

jurisdiction, ix. 312.

procedure, ix. 313.

adjournment, ix. 314.

complaint, ix. 314–316.

trial, ix. 316.

amendment of complaint, ix. 317.

conviction, ix. 317.

sentence, ix. 318.

review of sentences, ix. 319.

**POLICE COURT**—*continued.*

deviations, incompetency and defect of  
jurisdiction, ix. 320.

**POLICE, MILITARY**, ix. 323.

**POLICY OF INSURANCE**. *See* Accident  
Insurance; Fire Insurance; Life In-  
surance; Marine Insurance.

**POLITICAL**—

offence, xiii. 160, 161.

rights of alien, i. 189.

**POLL**. *See* Elections.**POLLUTION**. *See* Rivers; Water Supply.

**POOR**; **POOR LAW**, ix. 323. *See* Settle-  
ment; Lunacy Acts.

history, viii. 135; ix. 328.

administration of, ix. 325.

Local Government Board as super-  
visors, ix. 263, 326.

parish council as managers, ix. 327.

**officers**—

chaplain, ix. 337.

clerk of parish council, ix. 115, 331.

collector of poor rates, ix. 331.

inspector of poor, ix. 327.

medical officer, ix. 332.

**funds**—

church door collections, ix. 332.

mortifications, ix. 333.

assessment, ix. 118, 119, 333.

**relief**—

persons entitled thereto, ix. 335.

outdoor, ix. 336.

indoor, ix. 336.

boarding out pauper children, ix. 337,  
338.

**recourse**—

against relatives, ix. 339.

relief of seamen's wives and families,  
ix. 341.

relief of natives of India, ix. 341.

relief of army and navy pensioners,  
ix. 341.

against other parishes, ix. 340.

removal of pauper, ix. 341.

parish of settlement, ix. 341; xiv. 62.  
to England and Ireland, ix. 342;  
xiv. 62.

pauper lunatics, ix. 343.

repayment of aliment, i. 193.

**POOR RATES**—

prescription of, ix. 335.

*See* Rating.

- POOR'S ROLL; *PROBABILIS CAUSA LITIGANDI*—  
 Court of Session, ii. 353; ix. 344.  
 appointment of counsel and agents, ix. 344, 349.  
 procedure before and after admission, ix. 344, 347.  
 circumstances to warrant admission, ix. 347.  
 striking off roll, ix. 348.  
 regulations for counsel and agents, ix. 348.  
 expenses, ix. 349; xiii. 119.  
 Sheriff Court, ix. 349.  
 appointment of agents, ix. 349.  
 procedure for admission, ix. 350.  
 expenses, ix. 350.  
 duties of poor's agents, ix. 350.  
 House of Lords, ix. 350.  
 expenses, ix. 351.  
 criminal Courts, ix. 351.
- POPULAR ACTION, ix. 351.
- PORTS AND HARBOURS, ix. 352.  
 bonds over, xi. 141.  
 collision of ships, iii. 99.  
 erection and maintenance, ix. 353.  
 dues and rates, ix. 355; xi. 101.  
 regulations, ix. 355.  
 duties and liabilities of authorities, ix. 319, 356.  
 poor's rates, ix. 335.  
 reparation, x. 292.  
 sanitary authority, x. 113.
- POSSE COMITATUS*, ix. 241, 356.
- POSSESSIO DECENNALIS ET TRIENNALIS*, ix. 357.
- POSSESSION, ix. 357. *See* Possessory Action; Spuizie; Vicious Intromission.  
*bond fide*, ii. 159.  
 interim, vii. 39, 40.  
 following upon leases, vii. 328, 329, 330.  
 of heritage, ix. 358.  
 of moveables, ix. 358.  
 of pledge, ix. 282.  
 prescriptive, ix. 397.  
 parts and pertinents, ix. 187.  
 salmon fishings, xi. 99.  
 seashore, xi. 101.  
 servitude of support, xii. 198, 199.  
 presumptions arising from, x. 7.
- POSSESSION—*continued*.  
 securities not requiring, xi. 143.  
 when sequestration of lease equivalent to, vii. 353.
- POSSESSORY ACTION, ix. 361. *See* Possession.  
 Sheriff Court, xi. 311.
- POSSESSORY JUDGMENT, ix. 362.
- POSTHUMOUS CHILD, iii. 171; viii. 289; ix. 365, 391.  
 aliment of, i. 194; xii. 85.  
 legitim, xii. 78.  
 power of appointment, i. 282.  
 provisions to children—  
 nomination, xii. 85.  
 revocation of will, vii. 385, 386.
- POSTLIMINIUM; JUS POSTLIMINII*, ix. 365.
- POSTMARK, x. 5.  
 presumption, x. 5.
- POSTMASTER - GENERAL, ix. 366; x. 166.
- POST-MORTEM EXAMINATION, i. 222.  
 unauthorised, xiv. 73.
- POST-NUPTIAL CONTRACT. *See* Marriage-Contract.
- POST OFFICE, ix. 366. *See* Savings Bank.  
 explosive substances, v. 181.  
 presentment of bill through, ii. 96.  
 rating, x. 183.  
 offences, ix. 367.  
 interpretation clauses, ix. 368.  
 protection of exclusive privileges, ix. 369.  
 protection of P. O. and the public, ix. 370.  
 efficiency, secrecy, and honesty of employees, ix. 370.  
 interference with letters and dishonest practices, ix. 371.  
 improper interference with property, ix. 372.  
 general provisions to enforce Acts, ix. 372.  
*modus* in libel, ix. 373.  
 postal order, ix. 14.
- POWER. *See* Powers and Duties.
- POWER OF APPOINTMENT. *See* Appointment.
- POWER OF ATTORNEY, ix. 373. *See* Factor and Commission; Mandate; Principal and Agent.

**POWER OF SALE**, ix. 374.  
 by whom exercised, ix. 375 ; xi. 8, 9.  
 prior bondholder, ix. 375.  
*pari passu* bondholder, ix. 375.  
 postponed bondholder, ix. 375.  
 right of creditors to purchase subjects, ix. 376 ; xi. 9.  
 procedure, ix. 376.  
 advertisement, ix. 376.  
 clearing record, ix. 377.  
 under *ex facie* absolute disposition, ix. 377.

**POWERS AND DUTIES—**

- advocate, i. 145.
- of agent, i. 167.
- agricultural referee, i. 183.
- bankrupt, xi. 213.
- Board of Lunacy, viii. 169.
- broker, ii. 227, 229.
- burgh constable, iii. 231–233, 235–237.
- burgh prosecutor, ix. 312.
- chief constable, iii. 1.
- clerk of Justiciary, iii. 55.
- clerk of Police Court, ix. 312.
- clerk of the peace, iii. 58.
- clerks of Session, iii. 59.
- clerk of parish council, ix. 331.
- collector of poor rates, ix. 331.
- commissioners in sequestration, iii. 118 ; xi. 195.
- Commissioners of Supply, iii. 119.
- consul, iii. 241.
- councillor of a burgh, iii. 345.
- county assessor, i. 331.
- county constable, iii. 231–235.
- county council, iii. 358–364.
- County Road Board, x. 368.
- Crofters' Commission, iii. 399.
- curator, iv. 32–41.
- curator ad litem*, iv. 46 ; xiii. 27.
- curator bonis*, vii. 198, 202, 203.
- depute clerk register, x. 238.
- directors, vii. 132, 133.
- executors, v. 142–145.
- factor *loco absentis*, vii. 206.
- factor *loco tutoris*, vii. 178–192.
- harbour authorities, ix. 356.
- heritable creditor, ii. 177.
- of incorporation, vi. 312, 313.
- inspectors of factories and workshops, v. 212–247.
- inspector of poor, ix. 328.

**POWERS AND DUTIES—continued.**

- interim factor, xi. 182.
- judicial factor, vii. 178–192, 211.
- Justees of the Peace, vii. 266.
- law agent, x. 5.
- liquidator, vii. 158–161.
- Local Government Board, viii. 133.
- lord clerk register, x. 238.
- magistrates, ii. 264.
- medical officer of health, viii. 316–319.
- minors, iv. 41 ; viii. 356, 358.
- notary public, ix. 33.
- oversman, ix. 101.
- parish council, ix. 116.
- parish councillors, ix. 120.
- partners, ix. 165.
- pilot, ix. 269.
- police, ix. 308.
- poor's agents (Court of Session), ix. 348.
- poor's agents (Sheriff Court), ix. 350.
- poor's counsel, ix. 348.
- post office, ix. 366.
- pro-curator, iv. 43.
- procurator-fiscal, x. 59–62.
- pro indiviso* proprietors, iii. 138.
- pupil, x. 119.
- register of births, etc., xiii. 56, 57.
- registrar of friendly societies, x. 239.
- returning officer, ix. 122.
- school boards, iv. 372.
- seamen, xi. 105.
- Secretary for Scotland, xi. 138.
- Sheriff, xi. 320.
- town clerk, xii. 284 ; xiv. 80.
- trustees, xii. 355–360 ; xiv. 82.
- trustees for charitable purposes, ii. 395.
- trustee in bankruptcy, xi. 246.
- trustee in *cessio*, ii. 367.
- tutors, iii. 84 ; xiii. 8–21.
- under proxy, x. 89.
- tutor at law, xiii. 25.
- tutors dative, xiii. 23, 24.
- PRÆCARIUM***, ix. 377.
- PRÆCEPTIO, HÆREDITATIS.*** *See* Passive Title in Heritage.
- PRÆCIPUUM.*** *See* Heirs-Portioners.
- PRÆDIAL SERVITUDES.*** *See* Servitudes.
- PRÆPOSITURA***, ix. 378.
- what same extends to, ix. 378.
- determination by inhibition, vi. 358 ; ix. 379.

- PREAMBLE, xii. 3, 9.
- PRECARIUM.* *See Pracarium.*
- PRECATORY TRUST, vii. 373 ; xii. 118.
- PRECEDENCE, ix. 381.
- official rank, ix. 382.
  - personal rank, ix. 382.
  - officers of State in Scotland, ix. 386.
  - scale of general, ix. 383-387.
- PRECENTOR, i. 358 ; ix. 357.
- proclamation of banns, ii. 23.
- PRECEPTE FROM CHANCERY, iii. 48-50.
- of arrestment, i. 310.
  - of *clare constat*, iii. 46 ; x. 2.
  - superiority, xii. 155.
  - of sasine. *See Infestment.*
  - proof on view, xiii. 122.
- PRECOGNITION, ix. 63, 388 ; ii. 63.
- of deceased persons, ix. 389.
  - witness contradicting, ix. 388.
- PRE-EMPTION—
- clause of, iii. 175.
- PREFERENCES—
- accession to trust deed, i. 29.
  - by bankrupt, xi. 209.
  - to creditor's challenge, ii. 9, 22.
  - fraudulent, vii. 11.
  - undue railway, x. 161 ; xiv. 72.
- PREFERENTIAL PAYMENTS IN BANK-
- RUPTCY ACT, 1888, ix. 389.
  - application of Act to Scotland, ix. 389.
  - priority of debts, ix. 389.
  - abatement, ix. 390.
- PREGNANCY, ix. 365, 390.
- concealment of, iii. 163.
  - presumptions, x. 8.
- PREJUDICES—
- undue railway, x. 161.
- PREMIUM. *See Accident Insurance ; Fire Insurance ; Marine Insurance ; Life Insurance.*
- by apprentice, i. 289, 290.
  - in partnership, ix. 176.
- PREROGATIVE OF SOVEREIGN, xi. 372.
- PRESBYTERY. *See Church Courts.*
- PRESCRIPTION, ix. 392 ; xiv. 63.
- citation for interrupting, iii. 30.
  - computation of time, xiv. 62.
  - decennalis et triennalis*, ix. 357.
  - decennial—
    - tutors and curators, iv. 41 ; xiii. 18, 22.
    - international law, ix. 408.
    - interruption of, xi. 122.
- PRESCRIPTION—*continued.*
- minor's privilege, viii. 367.
  - negative, ix. 403.
  - bank notes, i. 390.
  - claims by shareholders, vii. 117.
  - claim of damages, iv. 71.
  - ground annual, vi. 143.
  - legacies, vii. 389.
  - legacy, xii. 121.
  - lost property, viii. 164.
  - reversions, ix. 405.
  - oath on reference, ix. 73.
  - positive, ix. 395 ; x. 67.
  - consolidation by, iii. 222.
  - arrears of feu-duty, xii. 167.
  - litigiosity, xi. 116.
  - possession, ix. 187, 397.
  - parts and pertinents, ix. 186 ; xiii. 239,
  - 240.
  - water, xiii. 171.
  - servitudes, ix. 403, 404 ; xi. 277-280.
  - servitude of support, xii. 198, 199, 201.
  - title, i. 238 ; ix. 396.
  - absolute disposition, i. 21.
  - adjudications, ix. 397 ; xi. 117.
  - bounding charter, ii. 203 ; ix. 399.
  - double title, iv. 353 ; ix. 402.
  - infestment, vi. 327.
  - notarial instrument, ix. 25.
  - quinquennial, x. 128 ; xiv. 71.
  - bargains, ii. 32 ; x. 129.
  - actions, x. 130.
  - deposit, xiv. 71.
  - maills and duties, x. 129.
  - stipends and multures, i. 25 ; x. 129 ;
  - xiv. 71.
  - register of interruptions, x. 257 ; xi.
  - 112.
  - replies to plea, ix. 406.
  - Roman law, xiii. 51.
  - septennial—
    - cautionary obligations, ii. 346.
    - judicial caution, xii. 213.  - sexennial—
    - bills of exchange, ii. 115.  - triennial, xii. 312.
    - arrestments, i. 320.
    - debts applicable, v. 170 ; vi. 213 ;
    - ix. 159 ; xii. 314 ; xiii. 125.
    - effect of Statute, xii. 312.
    - terminus a quo*, xii. 316.
    - writ or oath of party, xii. 317.

**PREScription—continued.**

vicennial—

- crimes, ix. 409; xiii. 120.
- general services, xii. 54.
- holograph writing, vi. 222; xiii. 120.
- retours, xiii. 120.
- writs or precepts of *clare constat*, iii. 51.

of crimes, ix. 409; xiii. 120.

**PRESENTATION, BOND OF**, ii. 186.**PRESENTATION OF BILL.** *See Accommodation Bill; Bills of Exchange.***PRESENTER OF SIGNATURE**, x. 1.

minor duties, x. 1.

Crown Charters Act, 1847, x. 2.

precept of *clare constat*, x. 2.**PRESUMPTION OF LIFE—**

Limitation Act, viii. 86; xiv. 63.

common calamity, xii. 40.

jurisdiction, xii. 39.

provisions of Act, xii. 39.

requisite evidence, xii. 38.

sale of heritable estate, iv. 305.

**PRESUMPTIONS; PRESUMPTIVE EVIDENCE**, x. 2.

derived from course of nature, x. 4.

derived from ordinary conduct, x. 4.

in favour of validity of Acts, x. 6.

arising from possession, ix. 358; x. 7.

continuance of things, x. 7.

in favour of innocence against misconduct, x. 8.

*omnia presumuntur contra spoliatorem*, x. 8.

substitution in conveyance of heritage, x. 8.

peerage law, x. 8.

**PRESUMPTIONS—**

against intestacy, xiv. 98.

child bearing, xiv. 63.

deed in grantor's possession, iii. 7.

in accident insurance, i. 32.

marriage, viii. 261-270.

of death, iv. 98.

of life, viii. 86; xii. 38.

of payment, i. 242; ix. 235.

*pater est quem nuptiae demonstrant*, ix. 228.*præpositura*, ix. 378.

pregnancy, ix. 391.

records of Court of law, x. 6.

**PRESUMPTIVE HEIR.** *See Heir - Apparent.***PRETIUM AFFECTIONIS**, x. 9.**PREVARICATION.** *See Perjury; Contempt of Court.***PREVENTION OF CRIMES ACT**, x. 9.  
*See Conviction.*

crime, x. 9.

convicts on licence, x. 9.

police supervision, x. 10.

register of criminals, x. 10.

suspects, x. 10.

harbouring thieves, x. 11.

female convicts, x. 11.

rogues and vagabonds, x. 11.

protection of constables, x. 11.

resetters, x. 11.

search for stolen goods, x. 12.

procedure, x. 12.

**PREVIOUS CONVICTION.** *See Conviction (Previous).***PREVIOUS QUESTION**, i. 215; x. 12.**PRICE.** *See Barter; Excambion.*

Lands Clauses Acts, vii. 288.

sale, xi. 6.

sale of heritage, xi. 11, 22.

upset, i. 350, 351.

**PRIMOGENITURE**, x. 13. *See Succession; Heir.***PRINCE—**

principality lands, xii. 52.

**PRINCIPAL AND ACCESSORY.** *See Accessory.***PRINCIPAL AND AGENT**, x. 13; xiv. 63.*See Auctioneer; Bank Agent; Broker; Factor; Law Agent; Jobber; Mandate; Stockbroker.*

constitution, i. 163, 164; x. 13.

rights and duties, i. 164, 167; x. 14.

rights and liabilities towards third parties, i. 169; ii. 232; x. 19.

actions against, iv. 166.

agents' bills of exchange, ii. 90.

arrestments by agent, x. 24.

bankruptcy, x. 25.

delegation of authority, i. 167; x. 16.

fraud, i. 170; vi. 60.

gaming and betting, vi. 109.

lien, i. 168, 169; x. 19.

remuneration and indemnity, i. 168; x. 17-19.

sale, xi. 7.

surveyors, xii. 204.

surrogatum, xii. 202.

**PRINCIPAL AND AGENT—*continued.***

revocation of agency, i. 169.  
title to sue, x. 275, 276.  
termination and discharge, i. 169 ; x. 18,  
    24, 25.

**PRINCIPAL DEBTOR.** *See* Debtor.**PRINCIPALS—**

university, xiii. 42.

**PRINCIPALITY OF SCOTLAND,** x. 25.**PRINT WORKS—**

employment in, v. 222.

**PRINTER,** x. 26.

account of, vi. 254 ; x. 24, 27.

election matter, iii. 334.

lien, x. 27.

prescription, xii. 315.

**PRINTS—**

printer's name, x. 27.

as evidence, ii. 61.

copyright, iii. 306.

dispensing with, i. 260, 261.

Court of Session, i. 260, 261.

**of appeal—**

House of Lords, i. 269, 271.

of note of suspension, xii. 217.

of petitions, ix. 261.

**PRIOR TEMPORE POTIOR JURE,**  
x. 27.**PRISON,** x. 28. *See* Prisoner.

breaking, x. 31.

rating, x. 183, 202.

visiting commissioners, x. 30.

witness in, xiii. 206.

**PRISONER.** *See* Declaration.

assisting to escape, i. 341.

bill of health, ii. 124.

civil, ii. 193 ; x. 31.

death of, x. 31.

breach of discipline, ix. 245.

diseased, x. 31.

escape of, v. 96.

unconvicted, x. 31.

of war, x. 32 ; xiii. 149.

    accumulation of, i. 50.

**PRIVATE ACT OF PARLIAMENT.** *See*  
    Private Bill.**PRIVATE BARGAIN—**

sale by, xi. 8.

**PRIVATE BILL,** x. 32. *See* *Locus standi* ;

    Provisional Order ; Referees.

    Private Legislation Procedure (Scotland)  
        Act, 1899, xiv. 63.

**PRIVATE BILL.—*continued.***

preparation of bill, x. 33.

The Clauses Acts, x. 33.

standing orders, x. 34.

model bill and clauses, x. 35.

**preliminary procedure—**

Wharncliffe meetings, x. 35.

notices by advertisement, x. 35.

notices and applications to owners, x. 35.

documents required to be deposited,  
    x. 35.

form of plans, etc., x. 36.

deposits of money, x. 36.

deposits in connection with bill from  
    other House, x. 36.

**proof of compliance with standing orders**,  
x. 37.

procedure before examiners, x. 37.

introduction to House, x. 37.

procedure before committee, x. 38.

petition for additional provision, x. 38.

reference to examiners between readings, x. 38.

**procedure in House of Commons, x. 38.**

first reading, x. 38.

second reading, x. 38.

reference to general committee, x. 39.

instructions to committee, x. 39.

supervision by officials, x. 39.

**procedure before committee—**

constitution of, x. 40.

petitions and objections, x. 40.

meeting, x. 41.

duties apart from inquiry, x. 41.

in unopposed bill, x. 41.

in opposed bill, x. 42.

proof of preamble, x. 42.

procedure on clauses, x. 42.

costs, x. 42.

report of committee, x. 43.

**third reading—amendments, etc., x. 43.**

report laid on table, x. 43.

clauses, x. 43.

consideration and third reading, x. 43.

**procedure in House of Lords, x. 44.****Lords' amendments considered in House  
of Commons, x. 44.**

personal, x. 44.

peerage bills, x. 45.

general procedure applicable to other  
    personal bills, x. 45.

**procedure in House of Commons, x. 45.**

**PRIVATE BILL—continued.**

fees and expenses, x. 45 ; xii. 393.  
Public and Private Acts, x. 46.  
royal assent, x. 46.

**PRIVATE COMPANIES.** *See* Companies.**PRIVATE HOUSE—**

breach of the peace in, ii. 210.

**PRIVATE LEGISLATION PROCEDURE (SCOTLAND) ACT, 1899, xiv. 63.** *See*

Private Bill; Provisional Order.  
presentation of petition, xiv. 63.  
preliminary procedure, xiv. 64, 65.  
chairman's report, xiv. 65, 66.  
opposing petitions, xiv. 67.  
inquiry, xiv. 68.  
conduct of proceedings, xiv. 68.  
expenses, xiv. 69, 70.  
confirmation bill, xiv. 69, 70.

**PRIVATEERS; PRIVATEERING, x. 46.**  
*See* Prize Law.**PRIVILEGE—**

abuse of civil process, iii. 40.  
character to servant, ii. 388.  
defamation, iv. 140, 150; xiv. 25.  
in superiority, xii. 182.  
meetings, viii. 324.  
of speech, iv. 149.

**PRIVILEGED—**

communications between husband and wife, iii. 185.  
debts, iv. 101; vi. 98; ix. 389; x. 46.  
friendly societies, vi. 78.  
summons, vi. 321.  
writings, x. 47.

**PRIVILEGES—**

of advocate, i. 146.  
of cautioners, ii. 334.  
of clerk to Property Tax Commissioners, iii. 186.  
of constable, iii. 233.  
of consul, iii. 241.  
of law agents, iii. 183; vii. 314.  
of medical adviser, iii. 185.  
of members of college of justice, iii. 94.  
of ministers, iii. 185.  
of minors, viii. 360-368.  
of public officials, iii. 185.  
of trustee in sequestration, iii. 45.

**PRIVY COUNCIL, x. 47; xiii. 247.**  
constitution, x. 47.  
executive functions, x. 48.  
functions in committee, x. 48.**PRIVY COUNCIL—continued.**

committee of council on education, x. 48.  
judicial committee, x. 49, 50.  
jurisdiction, x. 49.  
**PRIVY SEAL, xi. 103.**  
**PRIZE LAW, x. 51; xiii. 149.**  
vessels liable to detention, x. 51.  
procedure in Courts, x. 51.  
neutral port, x. 51.  
prizes taken by ships other than war-ships, x. 51.  
illegal prize, x. 51; xiii. 151.

**PROBABILIS CAUSA LITIGANDI.**  
*See* Poor's Roll.**PROBABLE CAUSE, WANT OF, iv. 151; x. 52.****PROBATE, iii. 196; vii. 57.****PROBATION.** *See* Evidence; Proof.**PROCEDURE ROLL, x. 54.****PROCESS; PROCEDURE.** *See* Actions; Appeal; Appeal to High Court of Justiciary; Appeal to Circuit Court; Bail; Clerk of Justiciary; Court of Justiciary; Court of Session; Criminal Prosecution; Expenses; Indictment; Jury Trial; Productions; Reclaiming; Sheriff; Summons; Suspension; Petition.

Court of Session, i. 73-81.

Sheriff Court, i. 81-85.

borrowing, i. 279; ii. 196; vii. 314.

caption, ii. 294.

contingency of a, iii. 257.

extracted and unextracted, v. 194.

inventory of, ii. 294.

lost, viii. 165; x. 80.

making up, ii. 279.

minute in, viii. 368.

minute of restriction, i. 14.

petitions, ix. 259, 260.

productions, x. 65.

removal of, i. 262.

sisting, xi. 344.

transference, xii. 299.

abuse of civil, iii. 40.

interim interdict, iii. 41.

continuing possession, iii. 41.

inverting possession, iii. 41.

diligence, iii. 41.

personal, iii. 42.

civil imprisonment, iii. 43.

process caption, iii. 43.

PROCESS, PROCEDURE—*continued.*

abuse of civil—*continued.*

arrestment, iii. 44.

inhibition, iii. 44.

poinding, personal, iii. 44.

poinding of the ground, iii. 45.

sequestration, iii. 45.

landlord's sequestration, iii. 45.

*solutum*, xi. 366.

## PROCLAMATION—

of marriage, ii. 23, 24.

of neutrality, xiii. 274.

## PROCURATION OF FEMALES, iii. 376.

## PRO-CURATOR, iv. 43.

accounting, iv. 43.

liabilities, iv. 43.

powers, iv. 43. *See* Curator; Tutor; Judicial Factor; Minor.

## PROCURATOR, x. 54.

## PROCURATOR-FISCAL, x. 55; xiv. 71.

*See* Prosecutor.

Sheriff Court, x. 55.

official position, x. 55.

qualification and appointment, x. 58.

removal, i. 151; x. 58.

depute, x. 58.

interim, x. 58.

emoluments, x. 58.

responsibility, x. 59, 301.

duties, i. 285; viii. 69; x. 59, 76, 110; xiii. 159.

remuneration, xiv. 71.

returns and accounts, iii. 381; x. 62.

Burgh Court, x. 62.

Justice of Peace Court, x. 62.

consent required, iii. 165, 166.

statutory protection, x. 74.

title to sue for penalties, ix. 249.

treasure-trove, xii. 310.

trial in absence, i. 17; xiv. 71.

## PROCURATORS IN GLASGOW, x. 63.

## PROCURATORY OF RESIGNATION.

*See* Confirmation by a Superior.

PRODUCTIONS, x. 65. *See* Process.

civil judicial proceedings, i. 78; x. 65.

jury trial, vii. 238.

reclaiming note, x. 212.

lodging papers, viii. 153; x. 65.

recorded deed, ix. 23; x. 249.

criminal trials, iii. 56, 382; x. 65.

labelling, etc., x. 65.

libelling, x. 66.

PRODUCTIONS—*continued.*

lodging, x. 66.

for defence, x. 66.

PROFANITY, x. 66. *See* Atheism; Blasphemy.

## PROFESSOR—

arrestment of pension, i. 234.

arrestment of salary, i. 313.

suspension of charge for salary, xii. 213.

## PROFITS—

by trustees, xii. 354.

from speculations by tutors, xiii. 15.

joint stock companies, vii. 142.

loans over, xi. 149, 150.

partnership, ix. 167.

violent. *See* Violent Profits.

waterworks, xiii. 184.

PROGRESS OF TITLES, x. 67. *See* Prescription; Sale.

## PROHIBITIONS—

destinations with, xii. 65, 66, 67, 68.

PRO INDIVISO, x. 52. *See* Common Gable; Common Pasturage; Common Property; Community; Conjunct Rights; Heirs-Portioners; Liferenter and Fiar; Partnership; Terce.PROMISE, x. 67. *See* Offer and Acceptance.PROMISE OF MARRIAGE. *See* Breach of Promise; Marriage.PROMISSORY NOTES, x. 67. *See* Bills of Exchange; Cheques; Co-obligants.

definition, x. 68.

essentials, x. 68.

delivery necessary, x. 69.

joint and several, x. 69.

presentment for payment to charge maker, x. 69.

presentment for payment to charge endorser, x. 69.

liability of maker, x. 69.

stamp duty, x. 70.

## PROMISSORY OATHS, ix. 75.

PROMOTERS. *See* Private Bill; Private Legislation Procedure (Scotland) Act, 1899; Provisional Order.

joint stock companies, vii. 111-113.

Lands Clauses Acts, vii. 282-289.

*locus standi*, viii. 144.

railway, x. 131.

tramway, xiii. 280, 289.

PROMULGATION. *See* Statute.

*PRO-MUTUUM*, iii. 170.

**PROOF**, i. 78 ; x. 71, 79. *See Evidence* ; Oath on Reference ; Commission. abandonment during, i. 2. appeal against interlocutor allowing, i. 278. as to usage, iv. 58 ; xiii. 47-51. before answer, ii. 46 ; x. 71. as to competency, ii. 47. as to relevancy, ii. 46. in remits, ii. 47. bill of lading, ii. 126, 127. burden of, i. 160. conduct of, x. 71. failure to attend, iv. 250. in arbitrations, i. 300-304. in consistorial actions, i. 14 ; iii. 220 ; viii. 251. in Debts Recovery Court, iv. 114. in Sheriff Court, i. 84. modes of, i. 78 ; x. 71. of adultery, iv. 308. of accession to trust deed, i. 29. of appointment of law agent, vii. 315. of bigamy, ii. 65. bills of exchange, ii. 80, 82, 87, 90, 113, 116. of breach of interdict, ii. 208. breach of promise of marriage, ii. 214. of cautionary obligations, ii. 326, 327, 328, 329, 331. of citation of witnesses, xiii. 204. of claims in ranking, xi. 220. of compromise, iii. 162. of contract, iii. 265. of desertion, iv. 309. of disposition absolute, i. 18 ; xii. 334-336. of donation, iv. 340-346 ; xii. 333-336. of foreign laws, vii. 46. of forgery, vi. 41. of fraud, vi. 62. of gratuitous alienation, vii. 8, 10, 15. of loan, viii. 128-132. of marriage, vi. 157 ; viii. 260, 264, 266. of nuisance, ix. 55. notour bankruptcy, xi. 175. of obligations regarding heritage, vi. 195. of partnership, ix. 150-153. of payment, ix. 235. of payment to legatee, xii. 358. of perjury, ix. 256. of promise, x. 67. of sale, xi. 6.

**PROOF—continued.**

of threats, xii. 258. of theft, xii. 247. of trust, i. 18 ; xii. 312-320, 331. on blank days, ii. 145. on view, xiii. 121. presumption of death, iv. 98. proving of the tenor, x. 83. stage when ordered, x. 71. recall of arrestments, i. 319. service of heir, i. 248. under Presumption of Life Limitation Aets, xii. 39, 40.

**PROPERTY**, x. 72. *See Possession* ; Rating ; Salmon Fishings ; *Accessio* ; Heritable Property. adjoining railways, x. 142. allodial, i. 208. *alluvio*, i. 210, 211. *alvei mutatio*, i. 211. *avulsio*, i. 368. armorial bearings, i. 307. artificial water channels, xiii. 171. bees, ii. 45. canals, ii. 280. church, i. 208, 209. club, iii. 65 ; xiv. 18. common, iii. 132, 137. common interests in, iii. 132. corporation, vi. 313. family burial-place, ii. 267, 269. copyright, iii. 290, 314. designs, iv. 213. dishonest appropriation of, i. 292. foreshore, xi. 102. lochs, xiii. 166. lost, viii. 164. pictures and paintings, ix. 106. of person sentenced to death, ii. 293. of trade unions, xii. 294, 295. of volunteer corps, xiii. 140, 141. registers, xi. 111. rivers, x. 350. seats in churches, xi. 126-132. theft of, xii. 245. treasure-trove, xii. 309-311. *udal*, i. 208. warrens, xiii. 163. wills, xiii. 167. whales, i. 225 ; xiii. 188. wild animals, i. 225. wrecks, xiii. 225.

- PROPERTY AND INCOME TAX.** *See* Income Tax.
- PROPOSAL.** *See* Accident Insurance; Fire Insurance; Life Insurance; Marine Insurance.
- PROPRIETOR—**
- avulsio*, i. 368.
  - of tenements, iii. 132. *See* Property.
  - joint, iii. 137; x. 52.
    - bidding at auction, x. 117.
    - division and sale, iv. 304-307.
    - heirs-portioners, xii. 48, 49.
    - title to sue, xii. 278, 279.
- PROPRIIS MANIBUS SASINE,** xi. 87.
- PROROGATION—**
- in arbitration, i. 298.
  - of commission to recover documents, iii. 108.
  - of jurisdiction, vii. 229; xi. 318.
  - of Parliament, ix. 127.
- PROSECUTION—**
- criminal. *See* Criminal Prosecution.
  - statutory, iii. 166.
  - malicious, x. 52, 72.
    - by public prosecutor, x. 73.
    - irregularity in proceedings, x. 73.
    - statutory protection, x. 74.
    - information given authorities, x. 75.
    - confinement in lunatic asylum, x. 75.
    - probable cause, x. 52.
- PROSECUTOR.** *See* Procurator-Fiscal.
- bargaining with accomplice, i. 38.
  - breach of interdict, ii. 208.
  - burgh, ix. 311.
  - citation by, iii. 37.
  - consent of, iii. 165.
  - in court-martials, xiii. 261.
  - proof in replication, iii. 384.
- PROSPECTUS.** *See* Company.
- PROSTITUTE—**
- evidence of, iv. 309.
  - may be ravished, x. 175.
- PROSTITUTION,** iii. 376; iv. 252.
- males earning from, xiv. 39.
- PROTECTION—**
- of infant life, ix. 117; x. 76.
  - of informer of crime, x. 75.
  - of monuments, xiv. 5.
  - of public officials, x. 74; xiv. 73.
  - of railway passengers, x. 159.
- PROTECTION—*continued.***
- of wild birds, ii. 139.
  - of witness, xiii. 162, 206.
  - to carrier, ii. 302.
- PROTECTION ORDER,** iii. 203; iv. 208; viii. 304.
- PROTEST—**
- of bill. *See* Accommodation Bill; Bills of Exchange.
  - bills by married women, xii. 141.
  - by householder, xii. 143.
  - dispensed with, ii. 103.
  - erasures in, v. 89.
  - expenses of, ii. 105.
  - forms of, ii. 78, 79.
  - no notary, ii. 112.
  - of lost bill, ii. 103.
  - place of, ii. 102.
  - stamp duty, ii. 115.
  - suspension of, xii. 206.
  - time for protesting, ii. 102.
  - requisites of, ii. 102.
- PROTESTATION,** i. 76; ii. 357; x. 77.
- extract, v. 195; x. 78.
  - reopening against, x. 78, 307.
  - in suspensions, x. 78.
- PROTOCOL BOOK,** xi. 33. *See* Notary Public.
- PRO-TUTOR.** *See* Tutor.
- PROUT DE JURE,** x. 79. *See* Evidence; Proof.
- PROVIDENT SOCIETIES,** vi. 322.
- PROVING OF THE TENOR,** x. 79.
- title to sue, x. 79.
  - defenders, x. 79; xii. 280.
  - where action competent, x. 80.
  - where action necessary, ii. 61; x. 80.
  - summons, x. 81.
  - casus amissionis*, i. 118; ii. 308; x. 81.
  - proof of terms of deed, x. 81.
- procedure, x. 83.
- effect of decree, x. 82.
  - Sheriff Court, xi. 313.
  - of interlocutor, vii. 40.
- PROVISION, HEIRS OF.** *See* Heirs.
- PROVISIONAL ORDER,** x. 83; viii. 144.
- Private Legislation Procedure (Scotland) Act, 1899, xiv. 63.
  - bodies empowered to issue orders, x. 84.
  - coming into operation, xii. 262.

PROVISIONS TO CHILDREN, WIDOWS, AND HUSBANDS. *See* Legitim; Marriage - Contract; *Condicio si sine liberis*; Donation; Terce; Courtesy; *Jus relictæ*; *Jus relictæ*; Conjunct Rights; Entails; Appointment, Power of.

PROVOCATION FOR ASSAULT, i. 328, 330.

PROVOST, ii. 264.

bankruptcy of, xi. 252.

PROXY, x. 87. *See* Mandate; Principal and Agent.

form, x. 88.

who may appoint and be appointed, x. 89. powers, x. 89.

Stamp Act, x. 88.

PSALM BOOK—

copyright, iii. 300.

PUBLIC AND PRIVATE ACTS, x. 32, 46.

PUBLIC BATHS—

provision and maintenance of, iv. 301.

PUBLIC BODY. *See* Incorporation; Company; Burgh.

PUBLIC BURDENS, x. 90. *See* Heritors; Manse; Rating; Education; Poor Law. *not debita fundi*, iv. 109. preferable claims, vi. 190.

PUBLIC HEALTH ACTS, viii. 316; x. 90.

*See* County Council; Parish Council.

Public Health (Scotland) Act, 1897, x. 90. authorities for execution, x. 91. district committee, iv. 304.

medical officer, viii. 315, 316; x. 91.

sanitary provisions, x. 92.

nuisances, x. 92.

removal of nuisance, x. 93.

slaughter-houses, x. 95.

offensive trades, x. 95.

scavenging and cleansing, x. 96.

infectious diseases, x. 98.

inspection of dairies, x. 100.

hospitals and ambulances, etc., x. 100.

lodging-houses, x. 101.

tents and vans, x. 101.

underground dwellings, x. 102.

vaccination, x. 102.

prevention and mitigation of disease, x. 98.

prevention of epidemic diseases, x. 102.

common lodging-houses, x. 103.

PUBLIC HEALTH ACTS—*continued*.

infectious diseases—*continued*.

sewers, drains, and water supply, iv. 356; x. 103.

rating and borrowing powers, x. 107, 205.

acquisition of lands, x. 109.

legal proceedings, ix. 263; x. 110.

neglect of duty, x. 110.

recovery of penalties, x. 111.

appeal, x. 111.

compensation, x. 112.

port sanitary authority, x. 113.

saving clauses, x. 115.

miscellaneous provisions and by-laws, x. 113.

Public Health (Scotland) Amendment Act, 1891, x. 115.

Infectious Diseases (Notification) Act, 1889, vi. 366; x. 116.

PUBLIC HOUSES. *See* Licensing (Scotland) Acts.

disorderly persons in, viii. 69.

goodwill of, xiv. 37.

PUBLIC LAW, iii. 239.

PUBLIC LIBRARIES, viii. 44; xiv. 46. income tax, vi. 278.

rating, x. 193.

PUBLIC MARKET. *See* Fairs and Markets.

PUBLIC OFFICIALS, ix. 91; viii. 390.

*See* Office.

as witnesses, xiii. 214.

arrears of salary, xiv. 81,

arrestment of salary, ix. 92.

bankruptcy of, ii. 365.

bribery of, ii. 219.

communications between, iii. 185.

protection of, x. 74; xiv. 73.

PUBLIC PARK—

games on, vi. 113.

PUBLIC PLACES—

reparation, x. 284.

PUBLIC PROSECUTOR. *See* Procurator-Fiscal; Prosecutor.

PUBLIC RECORDS. *See* Registers.

PUBLIC RIGHTS, ii. 36.

to maintain action, xii. 272, 273.

to use of seashore, xi. 100, 101, 102.

to use of canals, ii. 281.

PUBLIC RIGHT OF WAY. *See* Right of Way.

PUBLIC ROAD. *See* Road.

- PUBLIC ROUP. *See Sale; Auction.*
- PUBLICAN—  
charges for breach of certificate, viii. 63.
- PUBLICATION. *See Gazette.*  
of sequestration, xi. 181.
- PUBLISHED WORKS—  
copyright in, iii. 292.
- PUBLISHERS, x. 27.
- PUFFER, x. 117; i. 351.
- PUNISHMENT, x. 118. *See Crime;*  
Criminal Prosecution; Insanity; Penalties; First Offenders; Whipping.  
arbitrary, i. 296.  
banishment, i. 379.  
by fine, v. 329.  
capital, i. 296; ii. 291.  
penal servitude, ix. 245.  
previous convictions, iii. 279.  
refractory convicts, iii. 278.
- PUPERTY. *See Pupil; Marriage; Crime.*
- PUPIL, x. 119. *See Tutor; Judicial Factor;*  
Minor; Parent and Child.  
abroad, vii. 191; xiii. 13.  
administrator, appointed by donor,  
xiii. 2.  
aliment of, i. 192; vii. 183.  
aliment of dependents on, vii. 190.  
as executor, iii. 193; v. 142.  
as witness, i. 162; x. 122; xiii. 16.  
reference to oath, ix. 65; x. 122.  
completion of title, xiii. 12.  
contributory negligence, x. 122.  
custody of, vii. 191; xiii. 2, 9, 24, 25.  
intimations to, xiii. 16.  
education of, xiii. 10.  
estate of, xiii. 10–16.  
legal proceedings, x. 119; xii. 269.  
charges against, xiii. 16.  
arrestments in hands of tutor, i. 315;  
x. 122; xiii. 16.  
decree against, iv. 44; x. 120, 121.  
defender, iv. 158; x. 120; xii. 280.  
powers and capacities, iii. 213; x. 119;  
xiii. 11, 16, 17.  
cannot become partner, ix. 153.  
contract of service, i. 289; vi. 203.  
privileges and disabilities, x. 123.  
election by, xiii. 21.  
marriage, i. 162.  
legacies by, vii. 371.  
sale of heritage, iii. 83.  
will by, xii. 87; xiii. 192.
- PUPIL—*continued.*  
responsibility for crime, x. 122.  
searches against, xi. 121.
- PUPILS' PROTECTION ACT. *See Judicial Factor.*
- PUPILLARITY—  
boy, i. 162.  
girl, i. 162.
- PURCHASE. *See Sale.*  
*bonâ fide*, i. 341.  
heritable creditor's power to, ii. 178.  
of ammunition from soldier, i. 221.  
of tramways, xiii. 287.
- PURCHASER—  
of pistols, xiv. 60.  
right to retain price, ii. 243.
- PURSUER. *See Title to Sue.*  
caution by, ii. 352.  
changing character, i. 218.  
death of, x. 78.  
and defender concurrently negligent,  
iii. 270.  
must have interest, vii. 32.  
primarily negligent, iii. 269.  
addition to number, i. 218.
- PURSUVANT, viii. 178.
- QUADRIENNIAL UTILE, x. 123; xiii.  
13. *See Minor.*
- QUALIFICATION—  
Commissioners of Supply, iii. 119.  
county councillors, iii. 347, 365.  
of creditor to sequestrate, xi. 170.  
directors. *See Company.*  
of justices, vii. 265.  
law agent, vii. 308.  
of procurator-fiscal, x. 58.  
of town clerk, xii. 281, 282.  
of trustee in sequestration, xi. 192.
- QUANTI MINORIS, ACTIO, x. 123; iv. 75.
- QUANTUM MERUIT, x. 126.
- QUARANTINE, ii. 125; x. 102.
- QUARRY, viii. 338.  
fencing of, ix. 276.  
reparation for unfenced, x. 289.  
rating, x. 190, 198.
- QUARTER SEAL, xi. 103.
- QUARTER SESSIONS—  
appeal to, i. 273; vii. 268; viii. 71;  
xi. 295. *See Justice of the Peace.*
- QUASI-DELICT, iv. 174; viii. 298; ix.  
111, 379.

- QUEEN, iv. 5 ; xi. 371.
- QUEEN'S COUNSEL, x. 127.  
evidence, x. 128.
- and Lord Treasurer's remembrancer, x. 128.
- QUINQUENNIAL PRESCRIPTION, x. 128 ; xiv. 71.
- QUOAD OMNIA PARISH*, ix. 112.
- QUOAD SACRA PARISH*, i. 229 ; iv. 249 ; ix. 124.
- QUORUM. *See* Company.
- Circuit Courts, iii. 20.
- county council, iii. 350.
- joint committee, vii. 96.
- parish council, ix. 114.
- partnership, ix. 168.
- School Board, xi. 93.
- trustees, i. 313 ; xii. 352.
- RABBITS, x. 130 ; viii. 48 ; xiv. 37.  
day poaching, ix. 289.  
night poaching, ix. 287.  
warren, xiii. 162.
- RAILWAYS, x. 130 ; xiv. 71. *See* Carrier.  
abandonment, x. 172.  
acquisition of canals, ii. 282.  
acquisition of lands—  
“injuriously affecting,” x. 132.  
additional accommodation for extraordinary purposes, x. 132.  
Lands Clauses Acts, vii. 282–300.  
mining code, viii. 347.  
special provisions relating to mines, x. 133 ; xii. 192, 193.  
temporary purposes, x. 135.  
amalgamation, x. 171.  
appeal to Quarter Sessions, i. 274.  
arbitration, i. 304 ; x. 171.  
bankruptcy, ii. 6.  
construction, x. 136 ; xiv. 71.  
accommodation works, x. 140.  
fencing of line, v. 259 ; ix. 275 ; x. 289.  
level crossings, x. 289, 290.  
relations with contractors, x. 141.  
roads and bridges, x. 138.  
substituted roads, x. 139.  
electrical powers, xiv. 72.  
jurisdiction, x. 172.  
leases of, vii. 348.  
obligations to Government, etc., x. 165.
- RAILWAYS—*continued*.  
Railway and Canal Commission, x. 163 ; xiv. 72.
- Railway and Canal Traffic Acts—  
facilities, x. 162.  
publication of charges, x. 162.  
special services, x. 163.  
terminal charges, x. 162.  
through rates, x. 162.  
traffic over sea, x. 162.  
undue preferences and prejudices, x. 161 ; xiv. 72.
- rights of creditors, x. 166–168.  
adjudication for debt, xi. 141.  
arrestments, i. 315.  
debenture stock, xii. 372.  
intimation of assignation, i. 335.  
mortgages and debentures, vi. 185.  
rolling stock protected from diligence, x. 167.
- unpaid calls protected from diligence, x. 168.
- savings banks, xi. 92.
- superior's rights, xii. 279.
- taxation, ix. 334 ; x. 168–171, 185, 186, 187 ; xiv. 72.  
appeal against valuation, x. 180.  
assessor, i. 331 ; x. 177, 178.  
income tax, vi. 271–273.
- use and working, x. 141.  
adjoining proprietors, x. 142.  
carriage of goods, x. 146.  
carriage of horses, vi. 232.  
carriage of live stock, x. 150.  
carriage of passengers, x. 152.  
carriage of passengers' luggage, x. 151.  
cheap trains, x. 159.  
detention of trains, x. 156.  
fares and tickets, x. 156.  
general public, x. 143.  
left luggage, x. 152.  
other companies, x. 144.  
protection of passengers, x. 159.  
relation with servants and employees, x. 164.  
removal of passengers, x. 156, 158.  
special obligations to Government, x. 165.
- stations, x. 159.  
steamers, xii. 277.
- RANGES, ARTILLERY AND RIFLE, i. 326.

RANKING. *See* Sequestration; Bankruptcy.  
 accommodation bill, i. 37.  
 assignations and arrestments, i. 318.  
 bills of exchange, ii. 104, 122.  
 claims in *cessio*, ii. 370.  
*debita fundi*, iv. 109.  
 double—  
     in bankruptcy, iv. 351.  
 inhibitions, xi. 206.  
*pari passu*, x. 28.  
     bonds, ii. 180.  
 poinding of the ground, ix. 301.  
 preference by poinding, ix. 296.  
 sequestration of partnership, ix. 181.

RANKING AND SALE, x. 173.

RAPE, x. 175 ; iii. 377.  
     by pupil, i. 163.  
 bail, x. 176.  
*corpus delicti*, iii. 319.  
 intent, i. 328.  
 personating husband, i. 137.

RATE OF INTEREST, vii. 39.

RATEPAYER—  
     petition for rectification of accounts, xii. 273.

RATIFICATION—  
     by married women, ix. 63.  
     of agency, i. 165.  
     of forged bill, ii. 89.  
     principal and agent, x. 14.

RATING, x. 176. *See* County Council ; Poor Law ; Parish Council.  
 valuation, x. 176 ; xiv. 72.  
     annual value—how estimated, x. 183.  
     areas of, x. 176.  
     assessor, i. 331 ; x. 177.  
     valuation roll, x. 177.  
     railway assessor's roll, x. 178, 179.  
     making-up roll, x. 178.  
     persons entered in roll, x. 182.  
     property entered in roll, v. 261 ; ix. 355 ; x. 181.  
     currency of roll, x. 178.  
     finality of roll, x. 178.  
     appeals and complaint, x. 179.  
 assessment, burgh, x. 198 ; xiv. 72.  
     assessment roll, x. 199.  
     notice of assessments, x. 200.  
 Gas Supply Act, x. 202.  
     general assessment, x. 198.  
     general improvement rate, x. 200.

RATING—*continued.*  
 assessment, burgh—*continued.*  
     private improvement expenses, x. 201.  
     sewer rates, x. 201.  
     special assessment, x. 201.  
     under Act 1892, x. 198.  
 assessment, county, x. 194 ; xiv. 72.  
     burgh contributions, x. 196.  
     general, x. 197.  
     police rate, x. 196.  
     provisions of Act 1889, x. 195.  
 assessment, county and burgh, x. 202.  
 Contagious Diseases (Animals) Acts, 1878–1890, x. 206.  
 local loans guarantee rate, x. 209.  
 registration of voters, x. 208.  
 Roads and Bridges Act, x. 204.  
 Sheriff Court Houses Acts, x. 209.  
     under the militia, x. 207.  
     valuation, x. 208.  
 assessment parish, x. 188.  
 Burial Grounds Act, 1855, x. 193.  
 library rate, x. 193.  
 poor rate, x. 189.  
 registration births, etc., x. 193.  
 school rate, x. 192.  
 special rate, x. 194.  
 valuation rate, x. 194.  
 of churches, x. 190 ; xiv. 72.  
 of machinery, xiv. 72.  
 of railways, x. 168 ; xiv. 72.  
 prescription, xii. 316.  
 privileged debts, xii. 133.

REAL BURDEN, iii. 175. *See* Burdens ; Feu - Charter ; Infestment ; Notarial Instrument ; Building Restrictions.  
 constitution by tutors, xiii. 20.  
 ground annuals, iv. 108 ; vi. 141.  
 money burdens, iv. 108.

REAL RIGHT, vii. 250.

REBEL ; REBELLION, x. 209. *See* Denunciation ; Fugitation ; Horning ; Treason ; Outlawry.

RECALL—  
     of ambassador, i. 214.  
     of arrestments, i. 318 ; ii. 71.  
     of awards, i. 301.  
     of decree, i. 148.  
         in absence, i. 14, 16.  
     of factory, vii. 193, 194, 199, 204, 206, 214.  
     of fugitation, vi. 94.  
     of inhibitions, ii. 71 ; vi. 356.

- RECALL**—*continued.*  
 of interdiction, vii. 31.  
 of sequestration, xi. 177.
- RECEIPTS.** *See* Acknowledgment.  
*epocha trium annorum*, i. 242.  
 Stamp Acts, xi. 459–461.  
 deposit, iv. 202.
- RECEIVER OF WRECKS**, xiii. 224, 225.
- RECEIVING STOLEN GOODS**, x. 316.
- RECESS**—  
 Christmas, iii. 9.
- RECKLESS ACTS**, iv. 21.
- RECKLESS DRIVING**, vi. 99.  
 motor carriages, xiv. 56.
- RECKLESS USE OF FIREARMS**, v. 331.
- RECLAIMING NOTES**, x. 210. *See*  
 Reponing; Petitions.  
 classes of interlocutors, vii. 41; x. 216.  
 amendment of summons, xii. 149.  
 Bill Chamber, ii. 71; x. 222.  
 dealing with proof, x. 218.  
 Exchequer causes, x. 224.  
 not disposing of any part of the merits,  
     vii. 76; x. 220.  
 on the merits, x. 216, 305.  
 petitions under Trust Acts, x. 222.  
 recall of arrestments, etc., i. 318; x. 222.  
 sequestrations, x. 223.  
 summary petitions before Junior Lord  
     Ordinary, x. 221; xiv. 73.  
 Teind Court, x. 224.
- consenters no title, xii. 280.
- decisions as to, x. 225.
- effect of, x. 224.
- procedure, x. 210, 213–226; ii. 207.  
     counsel must sign, xiv. 73.  
     boxing record, xiv. 73.
- reclaiming days expired, x. 214.
- reclaiming days generally, x. 213.
- withdrawing, x. 227.
- RECOGNITION, CASUALTY**, xii. 159.
- RECOMMENDATION, LETTER OF**,  
 vi. 149.
- RECOMPENSATION**, x. 228.
- RECOMPENSE**, x. 228.  
 building on another's ground, i. 154.
- RECONSTRUCTION.** *See* Company.
- RECONVENTION**—  
 jurisdiction on ground of, vii. 228; xi.  
     319.
- RECONVEYANCE.** *See* Absolute Disposition.
- RECORD**, x. 229. *See* Defences; Pleas in Law; Summons.  
 adjustment of, i. 77.  
 amendment of, i. 216, 262; x. 227.  
     *res noviter*, x. 313.  
 Sheriff Court, i. 219.  
 averment on, i. 367.  
 boxing, ii. 207.  
 closing of, i. 77; x. 54.
- RECORDS**, x. 229. *See* Registers; Keeper of.  
 erasures in, v. 88.  
 of Court, x. 230.  
*rotuli Scotiae*, x. 388.
- RECORDING.** *See* Register.
- RECOUNT.** *See* Elections.
- RECOVERY OF PENALTIES**, iii. 285.
- REDDENDO**, x. 230; v. 306; xii. 157,  
     160, 176, 181.  
 blench, ii. 152.
- REDEMPTION**—  
 bond and disposition in security, ii. 177.  
 disposition absolute, xi. 113.  
 of casualties, xii. 177, 178.  
 of land tax, vii. 281.
- REDUCTION**, x. 231.  
 abiding by, i. 10.  
 jurisdiction of Sheriff Court, xi. 313.  
 of antenuptial contract, vi. 226.  
 of appointment of tutor-at-law, xiii. 25.  
 of awards, i. 295.  
 of decree in absence, i. 15.  
 of decree in multiplepoinding, viii. 382.  
 of deeds prejudicing creditors, xi. 124.  
 of discharge, xii. 271.  
 of divorce, iv. 313.  
 of extract decree, i. 264.  
 of fraudulent contract, vi. 61.  
 of gratuitous alienations, vii. 10, 18,  
     19.  
 of inhibition, vi. 351.  
 of letters patent, xii. 280.  
 of School Board election, xii. 273.  
 of small debt decree, i. 255.  
 of trust deed, xii. 397, 398.  
 on ground of insanity, xii. 92.  
 on ground of lesion, xiii. 16, 21, 22.  
 on ground of *res noviter*, x. 314.  
 of will, xii. 272.  
 procedure, x. 231–233.  
     execution of summons, v. 138.  
     form of summons, xii. 145.

**REDUCTION—continued.**

protestation, x. 78.  
reclaiming note, xii. 266.  
title to exclude, xii. 266.  
title to sue, xii. 272.

**REFEREE.** *See Arbitration.*

bills of exchange, ii. 84.

**REFEREES, COURT OF,** x. 233. *See Private Bill; Locus standi.***REFEREES, MEDICAL—**

Workmen's Compensation Act, xiii. 224.

**REFERENCE.** *See Arbitration.*

agricultural, i. 180–184.

description of lands by, iv. 278.

to accountant of Court, i. 41.

to real money burdens, ii. 241; iv. 278.

to oath. *See Oath on Reference.*

**REFORMATORY—**

boys sent to, i. 297.

certified inebriate, xiii. 245.

detention in, iii. 285.

State inebriate, xiii. 245.

school, iv. 379; xiii. 190; xiv. 73.

**REGALIA,** x. 234.**REGALIA MINORA,** v. 290; x. 234. excluded from parts and pertinents, ix. 183.

gold and silver mines, vi. 125.

mussel scalps, xiii. 239.

ownerless subjects, x. 235; xii. 309.

seashore, xi. 102; xiii. 239.

seaware, xiii. 240.

submarine minerals, xiii. 240.

**REGALITY,** x. 235.**REGALITY AND BARONY.** *See Burgh.***REGIAM MAJESTATEM,** x. 236.**REGIMENTAL DEBTS ACT,** x. 237.**REGISTER.** *See Registration.*

burgh, ii. 248, 255, 256; xi. 111, 119.

Register House, x. 252.

of abbreviates of adjudications, xi. 111, 114–118, 195.

of accidents, v. 230.

of births, deaths, and marriages, x. 258.

of booking, ii. 194; x. 257; xi. 111, 119.

of British ships, ii. 135.

of burgesses, ii. 257.

of chemical works, i. 206.

of common lodging-houses, iii. 135.

of consignations, i. 41.

of criminals, x. 10.

of dairymen, iv. 63.

**REGISTER—continued.**

of dentists, xiii. 252.

of designs, iv. 213.

of English or Irish judgments, ii. 70.

of factories, i. 41.

of fishing boats, xii. 302.

of hornings, ii. 392.

of inhibitions and adjudications, iv. 352, 358; x. 257; xi. 111, 112, 114, 118.

interdiction, vii. 30.

of interruptions of prescriptions, xi. 112.

of joint stock companies, vii. 103, 128, 152, 165.

of medical practitioners, xiii. 249, 250, 251.

of mortgages, iv. 103, 105; vii. 150.

of parliamentary electors, i. 331; x. 273; xiii. 45.

of probative writs, xiii. 227.

of scamen, xi. 103.

of sasines—

general, xi. 111, 119.

current general, xi. 111, 119.

particular, xi. 111, 119.

table of registers, x. 258.

of sequestrations, i. 39.

ship mortgages, xi. 327; xiii. 241.

of ships, i. 313; xiii. 241.

of tailzies or entail, v. 126; xi. 112, 122.

of trade marks, xii. 290, 291.

of trade unions, xii. 294–296.

of unclaimed dividends, i. 39.

Lord Clerk and depute clerk, x. 237.

Lyon, i. 307.

**REGISTERED FRIENDLY SOCIETIES,** vi. 73–89.**REGISTERED LETTER—**

citation by, iii. 26.

**REGISTRAR GENERAL,** x. 259, 260.**REGISTRAR OF FRIENDLY SOCIETIES,** x. 239.

building societies, ii. 237.

post office savings bank, xi. 91.

railway savings banks, xi. 92.

Shop Clubs Act, xiv. 18. *See Friendly Societies; Industrial and Provident Societies; Trade Unions.*

**REGISTRATION.** *See Infestment; Company.*

execution and preservation, x. 240–250.

bills of exchange, x. 244, 249.

books competent for, x. 246.

REGISTRATION—*continued.*

execution and preservation—*continued.*  
 borrowing registered deeds, x. 249.  
 clause of consent, x. 244.  
 extracts and warrants, v. 198 ; x. 248.  
 publication, x. 250.  
 burgh registers, x. 256.  
 clause of direction, v. 304 ; x. 256.  
 omission of warrant, x. 256.  
 entails, x. 257.  
 inhibitions and adjudications, vi. 352 ;  
     x. 257.  
 leases, vii. 353, 354, 355 ; x. 255.  
 notarial instruments, ix. 25 ; x. 255.  
 register of booking, x. 257.  
 warrant, vi. 340 ; x. 256.  
 of lodging-houses, x. 103.  
 motor carriages, xiv. 56.  
 of ships, xi. 327.

REGISTRATION APPEAL COURT, x.  
 273, 274.REGISTRATION OF BIRTHS, DEATHS,  
 AND MARRIAGES, ix. 117 ; x. 258.  
*See* *Banns* ; *Registrars* ; *Certificate*.

## births—

at sea, x. 264.  
 baptism, x. 264.  
 exposed child, x. 264.  
 foreign, x. 264.  
 illegitimate children, x. 263.

## deaths, x. 264.

abroad, x. 265.  
 at sea, x. 265.  
 burial, x. 265.  
 not in house, x. 265.

## marriages, viii. 269 ; x. 265.

foreign, x. 265.  
 irregular, x. 265.  
 regular, x. 265.

## correcting erroneous entries, x. 262.

## district examiners, x. 259.

## duplicate registers, x. 261.

## false information, v. 250.

## indices and extracts, x. 261.

## parishes or districts, x. 259.

## penalties, x. 261–266.

## register of neglected entries, x. 262.

## schedules, x. 267–270.

## REGISTRATION OF VOTERS, x. 208, 270.

valuation roll, x. 271.

assessor's first list, x. 271.

ordinary claim, x. 271.

REGISTRATION OF VOTERS—*continued.*

lodger claim, x. 272.  
 objections, x. 272.  
 mandate, x. 272.  
 Sheriff's Registration Court, x. 273.  
 amendment and correction, x. 273.  
 authentication of register, x. 273.  
 universities, x. 274.

REGRATING. *See* *Forestalling* ; *Engrosser*.

## REGULATIONS—

of railway passenger traffic, x. 156.  
 of traffic, x. 370.  
 baths, washhouses, etc., ii. 41.  
 factories and workshops, v. 212.  
 ferries, v. 261.  
 Marriage Notice Act, ii. 25.  
 of coal mines, iii. 67.  
 ports and harbours, ix. 355.

## REI INTERVENTUS, viii. 143 ; x. 275.

*See* *Contract* ; *Offer and Acceptance* ;  
*Homologation*.

heritable obligations perfected by, vi. 195.  
 innominate rights, vi. 367.  
 lease completed by, vii. 329.  
 parole evidence, ix. 141.  
 sale of heritage, xi. 15.

## REJECTION—

of goods, xi. 29, 32, 44, 45. *See* *Delivery*  
 of Moveables ; *Delivery Order*.

RELATIVES, iv. 163 *et seq.*

meaning of, xii. 116.  
 title to sue, xi. 367.

## RELEASE—

Stamp Acts, xi. 461. *See* *Liberation*.

## RELEVANCY—

civil causes, ii. 46 ; iv. 156.  
 criminal causes, iii. 382, 391 ; iv. 319.  
 Police Court proceedings, ix. 317.

oath on reference, ix. 65.

proof before answer, ii. 46.

RELIEF. *See* *Accommodation Bill*.

against co-cautioners, ii. 54, 335, 336.  
 against principal debtor, ii. 335.  
 and composition, xii. 169.  
 between heir and executor, vi. 174 ;  
     xii. 129, 130.

breach of contract, iv. 78.

co-delinquents, iii. 79 ; iv. 84.

contract of indemnity, ii. 317.

corrupt and illegal practices, iii. 337–340.  
 party paying feu-duty, xii. 163.

**RELIEF**—*continued.*

poor, ix. 335.  
widow defrauded of terce, xii. 242.

**RELIGION**—

custody of children, iv. 56 ; xiii. 6.

**RELIGIOUS BELIEF OF WITNESS**,

xiii. 207, 215.

**RELIGIOUS TEACHING IN SCHOOLS**,

iv. 373.

**RELOCATION**—

tacit, vi. 207.

**REMEMBRANCER.** *See Queen's Remembrancer.***RE MERCATORIA.** *See In re Mercatoria.***REMISSIO INJUR.E.** *See Divorce.***REMIT**, x. 277.

admission to poor's roll, ix. 346.

augmentation, i. 359.

in actions of accounting, i. 42.

in liquidation, xii. 185.

in entailed petitions, v. 52 ; xiii. 20.

in petition for special powers, xii. 364.

in suspensions, xii. 210, 211, 215, 222.

*ob contingentiam*, iii. 257.

proof before answer in, ii. 47.

reporter's fee, v. 178.

straightening of marches, incompetent, xii. 31.

to accountant, ii. 408.

to accountant of Court, i. 41.

to auditor, i. 355 ; xii. 224.

to clerk of the teinds, iii. 61.

to man of skill, ix. 262.

to Sheriff of Chancery, i. 248.

to stipendiary magistrate, xii. 16.

**REMOVAL**—

of administrator-in-law, xiii. 22.

of curator, iv. 39.

of *curator bonis*, vii. 199, 204.

of factor *loco absens*, vii. 206.

of judicial factor, vii. 193.

of pauper, ix. 342. *See Poor* ; Poor Law.

of process. *See Transference.*

of procurator-fiscal, x. 58.

of railway passenger, x. 156, 158.

of stipendiary magistrate, xii. 15.

of town clerk, xii. 284.

of trustees, vii. 208 ; x. 278.

of trustee in sequestration, xi. 249.

of trustee in cession, ii. 367.

of tutors nominate, xiii. 21, 22.

terms, xii. 244.

**REMOVAL**—*continued.*

defect in title, xii. 234.

of tenant, ii. 378 ; iv. 212 ; vii. 337 ; xii. 233-237, 361.

agricultural tenant, i. 179, 185 ; iv. 1 ; xii. 236.

procedure, xi. 314.

**REMUNERATION.** *See Recompense.*

agent, i. 168 ; x. 17.

arbiter, i. 294.

county clerk, xii. 1.

curator *ad litem*, iv. 46.

election officials, ix. 133.

factor, v. 211 ; xii. 315, 361.

justices of the peace, vii. 269.

law agent, v. 169 ; vii. 316 ; xii. 361, 362.

law clerks, vii. 325.

liquidator, xii. 185.

partner, ix. 167.

procurator-fiscal, xiv. 71.

registrars, x. 260.

town clerk, xii. 284.

trustee in bankruptcy, xi. 249.

trustee for creditors, xii. 400, 401.

trustee acting as factor, xii. 353.

trustee acting as law agent, xii. 353.

vaccinator's, xiii. 56, 57.

*quantum meruit*, x. 126.

**RENFREW**—

boundaries, xi. 120.

**RENT**, x. 280 ; vi. 92, 93. *See Hypothec* ; Landlord and Tenant ; Lease ; Removal.

abatement by trustees, xii. 361.

by tutors, xiii. 9, 13.

accumulation of, xii. 329-331.

allotments, i. 210.

Apportionment Act, i. 284.

arrears arrestable, i. 312.

arrestment of, i. 313.

assignation of, i. 339 ; ii. 175 ; v. 310.

*bond fide* possession, ii. 159.

crofters' holdings, iii. 395.

church pews, xi. 127-132.

heir and executor, vi. 176.

mineral leases, viii. 343.

penal, under lease, ix. 243.

prescription, x. 129 ; xii. 314.

privileged debt, xii. 133.

Sheriff Court, xi. 311.

receipts for, x. 47.

when payable, xii. 244.

RENTALLERS OF LOCHMABEN, xii.

237-239.

RENUNCIATION—

annuities, i. 233.

bills of exchange, ii. 107.

casualties, xii. 182.

claims for aliment, i. 194.

of lease by trustees, xii. 361.

by tutor, xiii. 13, 14.

Stamp Acts, xi. 461.

wadset, xiii. 15.

REPAIRS. *See Lease*; Entail; Agricultural Holdings Acts; Meliorations; Liferent and Fee; Ship; Mansion-House.

capital and income, ii. 290.

to parliamentary churches, ix. 130.

to *quoad sacra* parish church, ix. 124.

to canal, ii. 283.

to manse, viii. 205, 207.

REPARATION, x. 281; xiv. 73. *See*

Contributory Negligence; *Solatum culpa*; Measure of Damages.

for delict, x. 282.

breach of contract, x. 282.

ground of liability, x. 282.

vicarious liability, x. 283.

limits of liability, x. 283.

invitation and licence, x. 283.

title to sue, x. 285; xiv. 73.

plurality of pursuers, x. 285.

corporation, x. 286.

persons indirectly injured, x. 286; xiv. 73.

assignation and transmission of claim, x. 286-288.

liability to be called as defender, x. 287.

malice, x. 288.

negligence, x. 288.

duty to fence dangers on lands, v. 257; x. 288.

duty to keep premises safe, x. 290.

operations on property, x. 291.

natural use, x. 291.

non-natural use, x. 292.

nuisance, x. 292.

owners of works, x. 292.

master's liability to servant, x. 293.

seen danger, x. 296.

servant working beyond scope of duty, x. 296.

fellow-servant, x. 296.

personal fault of master, x. 297.

REPARATION—*continued*.

Employers' Liability Act, x. 298.

application of Act, x. 298.

cause of action, x. 298.

workmen aware of defect, x. 299.

amount recoverable, x. 300.

notice of accident, x. 300.

Sheriff Court, x. 300.

liability of master for servant, x. 300.

power of selection implied, x. 301.

control of work, x. 301.

acting in course of service, x. 302.

REPAYMENT—

of aliment, i. 193. *See* Repetition.

of bond, ii. 167.

REPEATING A SUMMONS, x. 303.

REPETITION, x. 303.

*condicione indebiti*, iii. 170; v. 94; x. 303.

by legatees, vii. 389, 390; xii. 120, 121.

REPOSING, x. 305. *See* Reduction; Suspension.

Court of Session—

interlocutor allowed to become final by mistake, x. 305.

decrees in absence, i. 14; x. 306.

decree by default, iv. 153; x. 306.

appeals, x. 307.

protestation for not calling, x. 78, 307.

paupers, ix. 349; x. 307.

Sheriff Court, i. 15; x. 308.

Small Debt Court, xi. 365.

REPORT. *See* Notice of Accidents Act.

by accountant of Court, i. 40. *See* Remit.

by auditor, i. 354.

of commission, iii. 106.

on remit, x. 277.

to Inner House, x. 308.

REPORTER. *See* Remit; Report.

in remit, x. 277.

fees, v. 178.

*probabilis causa*, ix. 346, 347.

REPORTS—

English, 5, xxvi.-xxxvii.

Scotch, 5, xxii.-xxiv.

Irish, 5, xxxix.-xli.

REPOSITORIES—

sealing, xii. 134.

REPRESENTATION, x. 308. *See* Character; Guaranty.

cautionary obligations, ii. 319, 320, 325,

326.

REPRESENTATION—*continued.*

contracts, x. 308.  
false, vi. 63.  
insurance, x. 308.  
letters of contract, viii. 40.  
personal bar, ii. 27.  
sale, x. 308.  
of the People (Scotland) Act, 1868, vi. 47.

parliamentary, iii. 140; vi. 47; ix. 128.

REPRESENTATIVE PEERS, SCOTTISH,  
ix. 242.

REPRESENTATIVES. *See* Executor.  
deceased's claim for reparation, x. 286, 288.  
deceased's claim for terce, xiii. 69.  
deceased's right to legitim, xii. 78, 87.  
election by insane persons, xii. 106.  
in arbitration, i. 299, 301.  
of defender, iv. 161.  
of executor, iii. 197.  
of heirs-portioners, x. 13.  
of partners, ix. 159, 169–178.  
of trustees, xii. 361, 362.  
Regimental Debts Act, x. 237.

## REPRISAL, x. 309.

## REPUGNANCY—

trust directions, xii. 359, 396.

REPUTED OWNERSHIP. *See* Possession.RES GESTÆ, x. 311. *See* Evidence.

## RES JUDICATA—

previous *judicium*, x. 311.  
identity of parties, x. 312.  
subject-matter of litigation the same, x. 312.  
identity of *media concludendi*, x. 312.  
criminal cases, x. 313.

RES NOVITER VENIENS AD NOTI-  
TIAM, x. 313.

new trial, ix. 18.  
productions, x. 65.  
suspension, xii. 207.

## RESALE—

of goods, xi. 47, 50.

## RESCISSION ACTION, i. 69.

## RESERVATIONS—

in feu-charter, v. 291–293; xii. 179, 180.  
of expenses, v. 158.  
of mines and minerals, viii. 340.

RESERVE FORCES, vii. 334; x. 314;  
xiii. 137, 228.

## RESERVOIRS, xiii. 180.

## RESET, ix. 233; x. 316.

*corpus delicti*, iii. 319.

RESIDENCE. *See* Settlement.

as ground of jurisdiction, vii. 219.

of pupil, xiii. 10.

franchise, vi. 49, 50, 51.

restraints on, iii. 178.

## RESIDUARY LEGATEE; RESIDUE.

*See* Legacy; Vesting.

RESIGNATION. *See* Superiority.

*ad remanentiam*, iv. 283–289.

and confirmation, iv. 270.

consolidation by, iii. 221.

*in favorem*, iv. 263.

writs of, iv. 270.

of commissioners in sequestration, iii. 117.

of judicial factor, vii. 194.

of member of Parliament, ix. 129.

of member of School Board, xi. 93.

of trustees, x. 317; xii. 186, 361, 362; xiv. 82.

in bankruptcy, xi. 249.

of tutors nominate, xiii. 9, 21.

## RESOLUTIVE CLAUSE, v. 37; x. 322.

RESOLUTIVE CONDITION, x. 322. *See* Sale; Entail.RESPONDENT. *See* Appeal; Election; Petition; Suspension.RESPONDENTIA, x. 322. *See* Bottomry; essentials to validity, x. 323.

lender's right to repayment, x. 323.

ship and freight primarily liable, x. 324.  
who can grant bond, x. 322.

RESPONSIBILITY. *See* Liability.RESTITUTION, x. 325. *See* Possession.

right to claim, x. 327.

excess delivery, x. 327.

lost property, x. 326.

poinded effects, x. 326.

stolen goods, x. 325, 327.

## RESTRAINTS ON LIBERTY, x. 328.

## RESTRAINTS ON RESIDENCE, iii. 178.

## RESTRAINTS ON TRADE, x. 328.

## RESTRICTION—

minute of, i. 14, 218.

of arrestments, i. 318.

of bond and disposition in security, ii. 180.

of conclusions, i. 218, 256.

building, ii. 233.

in feu-charter, v. 295, 296, 297.

nuisance, ix. 50.

RESULTING TRUST. *See* Trust.

- RETAINER—**  
 counsel, i. 145.  
 law agent, vii. 315.
- RETENTION**, x. 330. *See Lien.*  
 on property title, x. 330.  
 contracts resulting in right of, x. 331.  
 statutory restrictions by seller of goods, x. 331 ; xi. 46, 48.  
 under security rights, x. 332 ; xi. 144.  
 on other contracts, x. 333.  
 of debts, x. 334.  
 general principles of, x. 334.  
 cases of, x. 335.  
 mutual contracts, x. 335.  
 landlord and tenant, x. 335.  
 superior and vassal, x. 337 ; xii. 167, 183.  
 in bankruptcy, x. 337.  
 in partnership, ix. 176.  
 by agent, x. 18.  
 by banker, i. 387.  
 by salvor, xi. 85.  
 by stockbroker, xii. 20.  
 by trustees, xii. 355.  
 of negotiable instruments, ix. 11.  
 of pledge, ix. 282.
- RETIRAL TO ABBEY**, i. 7.
- RETOUR**, ii. 220. *See Service of Heirs.*  
 prescription, xiii. 120.
- RETOURED DUTIES**, v. 182.
- RETREATS FOR INEBRIATES**, xiii. 244.
- RETROCESSION—**  
 to bankrupt, i. 3.
- RETURN—**  
 income tax, vi. 262, 300.  
 parliamentary elections, ix. 137.  
 sale or, xi. 5, 36.
- RETURN, CLAUSE OF**, x. 340. *See Substitute.*
- RETURNING OFFICER—**  
 county council elections, iii. 353, 365.  
 municipal elections, viii. 386.  
 parish council elections, ix. 122.  
 parliamentary elections, ix. 131, 135–138.  
 School Board elections, xi. 94.  
 university elections, xiii. 45.
- REVERSION**. *See Heritable Securities.*  
 assignation of, i. 333.  
 subject to annuity, i. 234.  
 terce not payable from rights of, xii. 49, 243.  
 prescription, ix. 405.  
 under trust deeds, xii. 333.
- REVIEW**, x. 340. *See Advocation; Appeal; Reclaiming Notes; Suspension.*  
 arbiter's award, i. 305.
- REVISION—**  
 statutory law, xii. 9–11.
- REVOCATION**, x. 340 ; xiv. 74.  
 of acceptance, ix. 80.  
 of agency, i. 169.  
 of bills of exchange, ii. 87.  
 of cautionary obligations, ii. 340.  
 partnership, ix. 164.  
 of donation, iv. 335, 336.  
*of donatio inter virum et uxorem*, iv. 336, 337, 338 ; xii. 106.  
 of donation *mortis causa*, iv. 338 ; xii. 103, 104.  
 of legacies, vii. 368, 377, 385 ; xii. 122.  
 of marriage-contracts, viii. 282–285 ; x. 341 ; xii. 97, 98 ; xiv. 74.  
 of mutual wills, vii. 375 ; xii. 96, 97, 122 ; xiii. 202.  
 of power of appointment, i. 282.  
 of offer, ix. 80.  
 of previous will, xiii. 193, 194 ; xiv. 74.  
 of rights in favour of third parties, vii. 256.  
 of trust, xii. 340–342 ; xiv. 81.  
 of wills, x. 341 ; xii. 94–96 ; xiii. 199.  
 by birth of child, x. 341 ; xii. 95.
- RIDING—**  
 furious and reckless, vi. 99.
- RIDING CLAIMS**. *See Multiplepoinding.*
- RIFLE RANGES**, i. 326.
- RIGHT OF BARONY—**  
 constitutional, xiii. 237.  
 feudal, xiii. 237.  
 jurisdiction, xiii. 237.  
 parts and pertinents, xiii. 239.  
 union of lands, xiii. 238.  
 prescriptive rights, ix. 398.
- RIGHT OF WAY**, vi. 197–199 ; x. 344 ; xiv. 77.  
 nature and qualities, x. 344.  
 manner in which acquired, x. 344.  
 who may vindicate and appropriate procedure, x. 345 ; xi. 285.  
 effect of judgment on question of, x. 346.  
 presumptions, x. 7.
- RIGHTS**. *See Heritable and Moveable; Corporeal and Incorporeal; Jus in re; Obligations.*  
 base and public, ii. 36.  
 by possession, ix. 357.

RIGHT—*continued.*

- common interests, iii. 132.
- conjunet, iii. 205.
- in rivers, x. 350–362.
- innominate, vi. 366.
- joint and several, vii. 93.
- of agent, x. 17.
- of alien, i. 189, 190.
- of annualrent, i. 230.
- of belligerents, xiii. 274.
- of bill holder, ii. 94.
- of bleaching, ii. 152.
- of broker, ii. 229.
- of broker against principal, ii. 231.
- of cautioners, ii. 334.
- of ferry, v. 260.
- of heirs, vi. 170.
- of liferenter, viii. 113.
- of pledgee, ix. 281.
- of restricted endorsee, ii. 93.
- of shipowners, xiii. 241.
- personal, ix. 258.
- to support of buildings, xii. 195, 200, 201.
- to support of land, xii. 187, 195.

## RIOT, viii. 370.

- Act, viii. 371.
- bloodwit, ii. 156.
- fire insurance, v. 345.

## RISK OR PERICULUM, x. 346.

- carriage, x. 348.
- consigned funds, iii. 217.
- deposit or consignation, x. 349.
- exambion, xi. 11.
- hiring of lease, x. 348.
- insurancee, x. 350.
- accident insurance, i. 32.
- fire insurance, v. 342–345.
- life insurance, viii. 99.
- maritime insurance, viii. 214, 229, 230.
- loan, x. 348.
- locatio operarum*, x. 349.
- railways, x. 150.
- sale, x. 347; xi. 37, 40, 42, 45.

RIVER, vi. 32; x. 350. *See aquæhaustus;*

- aquæductus*; water; servitude.
- navigable, x. 350.
- tidal, x. 351.
- non-tidal, x. 352.
- non-navigable, x. 353.
- natural rights, x. 353.
- nature of rights in bed and banks, x. 354.

RIVER—*continued.*

- non-navigable—*continued.*
- nature of rights in water of stream, x. 355.
- equitable jurisdiction of Court, x. 356.
- operations *in alveo*, x. 357.
- operations on the banks, x. 358.
- operations affecting water, x. 358.
- diversion or interference with natural flow, x. 359.
- questions as to user and consumption of water, x. 360.
- operations affecting quality of water, ix. 39; x. 362.
- rights of non-riparian owners and grantees, x. 362.

## RIVERS POLLUTION PREVENTION

- ACT, 1876, x. 363; xiv. 74.
- solid refuse, x. 364.
- sewage matter, x. 364.
- liquid from factories, x. 364.
- matter from mines, x. 365.
- those entitled to prosecute, vii. 96; x. 365; xiv. 74.
- legal procedure, x. 365.

ROAD. *See Highway; Right of Way.*

- drove, iv. 358; viii. 132.
- rule of the, ii. 305; x. 366.
- at sea, rule of the, x. 366. *See Collision.*
- substituted compulsory powers, x. 139.
- fencing of, ix. 276.

ROADS AND BRIDGES, x. 204, 366; xiv. 75. *See Highways.*

- authorities, x. 367.
- management of, x. 369; xiv. 75.
- surveyor, x. 369.
- list of roads and bridges, x. 369.
- highways, x. 369.
- closing roads, x. 369.
- temporary closing of, x. 369.
- power to get materials, x. 370; xiv. 75.
- construction of, x. 370.
- regulations of traffic, x. 370.
- new roads and bridges, x. 370.
- partially in county and burgh, x. 371.

- joint bridge committee, x. 371.
- maintaining joint bridges, x. 371.
- by-laws, x. 372.
- extraordinary traffic, x. 372.
- finance—
- borrowing, x. 373.

ROADS AND BRIDGES—*continued.*

finance—*continued.*  
debt, x. 373.  
assessment, x. 204, 373, 374.

burgh, x. 374.  
railways, x. 138, 139.  
title to sue, xii. 273.  
reparation, x. 287, 289, 292.

## ROBBERY, x. 375.

*corpus delicti*, iii. 319.

## ROE—

salmon, xiv. 36.

ROGUE MONEY, x. 375. *See* County Council.

## ROLLS OF COURT—

calling list, ii. 278.

debate, iv. 101, 102.

Long Roll, xii. 140.

procedure, ii. 48; x. 54.

Short Roll, xii. 140.

single bills, xi. 341.

Summar Roll, xii. 140.

undefended causes, i. 280.

vacation, ii. 71.

*See* Poor's Roll.

## ROMAN LAW, x. 376.

divisions and sources of, x. 378.

digest or pandects, x. 380.

texts, x. 380.

the code, x. 380.

pre-Justinianian texts, x. 381.

novels, x. 381.

institutes, x. 381.

history after time of Justinian, x. 382.

in Great Britain, x. 384.

England, x. 384.

Scotland, x. 385.

*acceptatio*, i. 26.

*actio redhibitoria*, i. 62.

*actus*, i. 86.

adoption, i. 134.

adpromissor, i. 135.

adrogation, i. 136.

adstipulator, i. 137.

*aemulatio vicini*, i. 154.

*affinitas*, i. 158.

*alieni juris*, i. 191.

*antichresis*, i. 242.

*arrhæ, arræ, or arrabo*, i. 323.

arbiter in, i. 296.

*beneficium cedendarum actionum*, ii. 51.

*beneficium competentiae*, ii. 55.

ROMAN LAW—*continued.*

*beneficium divisionis*, ii. 56.

*beneficium ordinis, excussionis, discussionis*, ii. 59.

*bond fide possessio*, ii. 157.

*bonæ fidci, actiones*, ii. 165.

*bona vacantia*, ii. 166.

*bonorum possessio*, ii. 187.

*brevi manu traditio*, ii. 217.

*capitis diminutio*, ii. 293.

*cautio*, ii. 311.

*cessio bonorum*, ii. 376.

*codicilli*, iii. 80.

*collatio bonorum*, iii. 89.

common property in, iii. 139.

*communi dividendo actio*, iii. 143.

*conductio causa data causa non secuta*, iii. 169.

*confarreatio*, iii. 182.

constitution, iii. 238.

*crimen repetundarum*, iii. 376.

*damnum*, iv. 85.

*donatio*, iv. 332.

*dos*, iv. 347.

*exceptio*, v. 131.

*exceptio non numeratae pecuniae*, v. 132.

*exercitoria, actio*, v. 150.

*falcidia portio*, v. 248.

*familiae erciscundæ actio*, v. 251.

*feriae*, v. 260.

*fideicommissum*, v. 326.

*fidejussio*, v. 327.

*finium regundorum actio*, v. 331.

*habitatio*, vi. 157.

*intentio*, vii. 24.

interdicts in, vii. 29.

*intercessio*, vii. 24.

*iter*, vii. 87.

*judex, judicium*, vii. 168.

*jus*, vii. 241.

*jus dcliberandi*, vii. 248.

*jus fetiale*, vii. 250.

*laesio ultra dimidium*, vii. 278.

legacy in, vii. 409.

*legitima portio*, viii. 29.

*lex commissoria*, viii. 42.

*lex talionis*, viii. 43.

*litis contestatio*, viii. 125.

*locatio conductio*, viii. 136.

*manumissio*, viii. 211.

*mancipatio*, viii. 195.

mandate in, viii. 201.

ROMAN LAW—*continued.*

*matrimonium*, viii. 311.  
*metus*, viii. 330.  
*negotiorum gestio*, ix. 15.  
*nexum*, ix. 18.  
obligations in, ix. 85.  
*pactum*, ix. 102.  
*pactum de quota litis*, ix. 104.  
*patria potestas*, ix. 229.  
*peculium*, ix. 237.  
*pendente lite nihil innovandum*, ix. 252.  
*pignus*; pignorate rights, ix. 266.  
*pluris petitio*, ix. 286.  
*postliminium*, ix. 365.  
Prætorian edict, ix. 380.  
prescription, xiii. 51.  
procurator, x. 54.  
*redhibitoria actio*, x. 230.  
*res*, x. 309.  
*restitutio in integrum*, x. 324.  
*Rhodia (lex) de jactu*, x. 343.  
*specificatio*, xi. 376.  
*stipulatio*, xii. 16.  
succession in, xii. 136.  
testament, xii. 136.  
*usus*, vi. 157; xiii. 54.  
*via*, xiii. 119.  
*vindicatio*; *vindicatio rei*, xiii. 123.

ROTATION OF CROPS. *See* Cropping.

ROTULI SCOTIÆ, x. 388.

ROUP. *See* Auction; Articles of Roup.

ROYAL BANK OF SCOTLAND, i. 380.  
notes in circulation, i. 390.

ROYAL BURGHS. *See* Burgh (Royal).  
family, viii. 253.  
marines, i. 309.  
*See* Gold and Silver Mines.

pleasure, verdict of acquittal, xiii. 60.

prerogative, capital punishment, i. 296.

Titles Act, 1901, xiv. 75.

ROYALTY. *See* Mines; Patent; Copyright.

abatement by tutor, xiii. 13.

RUBRIC, xii. 3.

RUINOUS BUILDINGS, vii. 88.

RULE—  
of the road, ii. 305; x. 366.  
of the road at sea, x. 366.

RULES. *See* Regulations.

RUNNING DAYS, iv. 194, 195. *See* Demurrage; Charter-Party.

RUNNING LETTERS. *See* Criminal Prosecution.

## RUNNING POWERS—

railway, x. 145.

RUNRIG AND RUNDALE, x. 389.

## SABBATH, xii. 152.

Sabbath-breaking, xi. 1.

SAILOR. *See* Seamen; Ship; Ship-Master.

## SALARY—

arrears of, xiv. 81.

arrestment of, i. 313, 314.

auditor, Court of Session, i. 354.

chief constable, iii. 2, 4.

clerks of Session, iii. 59.

clerk of the teinds, iii. 60, 61.

clerk to parish council, ix. 332.

Commissioner to the General Assembly  
iii. 117.

county assessor, i. 330.

effect of bankruptcy, i. 204.

extractor and assistant, v. 199.

law clerk, vii. 325.

medical officer, ix. 332.

stipendiary magistrates, xii. 15.

SALE, xi. 2. *See* Delivery Order; Division and Sale; Factors Acts; Ranking and Sale; *Actio quanti minoris*; Bill of Sale; Cognition and Sale; Lands Clauses Acts; Power of Sale; Trustee. combined with other contracts, xi. 4.

distinguished from other contracts, xi. 4.

price as an element, vi. 251; xi. 6.

transfer as an element, x. 331; xi. 7.

goods—

formation of the contract, xi. 24–26.

price, xi. 27, 28.

conditions and warranties, xi. 29–35,  
51.

effect of the contract, xi. 36–40.

transfer of property, xi. 36, 38.

transfer of risk, xi. 37, 40, 42, 45.

transfer of title, xi. 37, 40.

performance of the contract—

duties and rights of buyer, ii. 354; xi.  
41, 44, 45.

duties and rights of seller, xi. 41–44.

breach of contract—

remedies of buyer, iv. 73; xi. 23, 51,  
52.

remedies of seller, iv. 73; xi. 51, 52.

- SALE**—*continued.*
- goods**—*continued.*
- rights of unpaid seller, xi. 45–50.
  - by auction, i. 349; xi. 52, 55.
  - common law reserved, xi. 53, 56.
  - course of dealing and usage, xi. 55.
  - landlord's hypothec, xi. 53, 56.
  - payment into Court in Scotland, xi. 53, 55.
  - security excluded, xi. 39, 53.
- heritage**—
- by auction, i. 325, 326, 349; xi. 16.
  - judicial, iii. 218; iv. 305; x. 173; xi. 15.
  - parties, xi. 7.
  - heritable creditor, ii. 177, 178; ix. 374.
  - pari passu* bondholder, ii. 179.
  - price, xi. 11.
  - interest on price, vii. 38.
  - retaining price, xi. 110.
  - consent and its expression, xi. 14, 15.
  - effect of conditions, xi. 16, 17.
  - subjects, xi. 9, 10.
  - burdened with annuity, i. 232.
  - ruinous buildings, i. 377; vii. 88.
  - seats in churches, xi. 129.
  - transfer of ownership, xi. 12, 13.
  - buyer's obligations, xi. 22.
  - seller's obligations, xi. 17, 18, 20, 109; xiii. 155.
  - remedies, xi. 23, 24.
- and lease, xi. 5.
- hire-purchase, xi. 5, 30.
- on approval, xi. 5, 36.
- on return, xi. 5, 36.
- of cargo, i. 165, 367.
- of expectancy, xi. 387.
- of Fertilisers and Feeding Stuffs Act, v. 262.
- of Foods and Drugs Act, x. 203; xi. 58; xiv. 75. *See* Poison.
- of goodwill, vi. 126–137; x. 329.
- of Horseflesh, etc., Regulation Act, 1889, xi. 64.
- of incorporeal moveables, xi. 56–58.
- of pawned goods, ix. 232.
- of salvage, xi. 84.
- of sequestered effects, vi. 248.
- of ship, ii. 134; xiii. 241.
- of *spes successionis*, xii. 136; xiii. 65.
- of stamps, xi. 407.
- of teinds, vii. 273.
- of tramway, xiii. 287.
- SALMON FISHING.** *See* Fishing.
- SALVAGE**, xi. 65; xiv. 76. *See* Average.
- amount of award, xi. 78.
  - apportionment of award, xi. 82.
  - enforcement of rights, xi. 84.
  - liens for, vi. 251; viii. 79.
  - life, xi. 67; xiv. 76.
  - multiple poinding, xi. 85.
  - proper subjects of, xi. 67.
  - who are entitled to, iii. 372; xi. 68, 105.
  - who are liable for, ii. 239; xi. 76.
  - what circumstances due, xi. 73.
- SAMPLE, SALE BY**, xi. 35.
- SANCTUARY, PRIVILEGE OF**, i. 7; xi. 86.
- SAND FOR BALLAST**, xi. 100.
- SANITARY INSPECTOR.** *See* Public Health Acts; Factory and Workshop Acts.
- SASINE.** *See* Infestation; Registration; Burgage.
- SASINE PROPRIIS MANIBUS**, xi. 87.
- SATISFACTION.** *See* Legacies; Succession.
- SAVINGS BANKS**, xi. 88. *See* Friendly Societies; Registrar of Friendly Societies.
- constitution, xi. 88.
  - rules, xi. 89.
  - vesting of property, xi. 89.
  - liability, xi. 89.
  - deceased depositors, xi. 90.
  - depositors, xi. 90.
  - disputes, xi. 91.
  - inspection and closing, xi. 91.
  - military and naval, xi. 92.
  - seamen's, xi. 92.
  - post office, ix. 367; xi. 91.
  - railway, xi. 92.
  - income tax, vi. 286, 299.
- SCATTALD.** *See* Udal Law.
- SCAVENGING**, iv. 301.
- SCHEDULES, SURVEYORS**, xii. 204.
- SCHOOL.** *See* Education.
- districts, xi. 370.
  - supply of accommodation, iv. 370.
  - religious teaching in, iv. 373.
  - higher class public, iv. 376; xi. 376.
  - technical, iv. 376; xi. 376.
  - industrial and reformatory, iv. 379; xiv. 73.
  - poor rates, x. 190.

SCHOOL BOARD. *See Education.*

elections, procedure at, iv. 371 ; xi. 93.  
 number of members, xi. 93.  
 electorate, xi. 94.  
 day of election, xi. 94.  
 returning officer, xi. 94.  
 nomination papers, xi. 95.  
 notices, xi. 96.  
 the poll, xi. 95.  
 result, xi. 96.  
 documents, xi. 96.  
 petitions or disputes, xi. 96 ; xii. 273.

teachers, iv. 375 ; xii. 226.

SCHOOLMASTER. *See Education.*

*ad vitam aut culpam*, i. 140.  
 chastisement by, i. 330.  
 charge for payment of salary, xii. 213.  
 salary prescription, xii. 316.  
 widows' fund, i. 314.

## SCIENTER, xi. 96.

## SCOTCH REPORTS, 5, xxii.-xxiv.

## SCOTLAND—

Chamberlain of, ii. 381  
 principality of, x. 25.  
 Roman law in, x. 385.

## SCOTS MONEY, xi. 97

## SCOTTISH EDUCATION DEPARTMENT, iv. 371.

## SCULPTURE, COPYRIGHT, iii. 310.

SEA, xi. 97. *See Mines and Minerals ; Seashore.*

collision at, xi. 97.  
 apprentice, i. 289.  
 bounding charter, ii. 205.  
 fisheries, vi. 3 ; xi. 98, 99.  
 minerals under, viii. 341 ; xi. 99, 103.  
 offences committed at, vii. 271 ; xi. 99.  
 retreat of, i. 210.  
 the narrow sea, xi. 98.

## SEAL, xi. 103.

of cause, xi. 103.  
 of incorporation, vi. 312.  
 the privy, xi. 103.  
 the quarter, xi. 103.  
 the great, xi. 103.  
 the signet, xi. 103.

## SEALED TENDER—

auctioneer, i. 350-352.

## SEAMEN, xi. 103.

confining, i. 330.  
 definition, xi. 103.

SEAMEN—*continued.*

discharge of, xi. 108.  
 entering navy, xiii. 257.  
 hiring of, xi. 104.  
 lien, vi. 250 ; xi. 107.  
 mercantile marine offices, xi. 103.  
 poor relief, ix. 341.  
 presumption of death, iv. 98.  
 salvage, xi. 69, 84.  
 savings banks, xi. 92.  
 unseaworthy ship, xi. 135.  
 wages, i. 314 ; vi. 211 ; viii. 306 ; xi.

105-107, 309.

wages of deceased, xii. 126, 127.

whipping of, xiii. 189.

## SEARCH WARRANT, xi. 125.

disorderly house, iv. 252.

execution thereof, xi. 126.

pawnbroking, ix. 233.

stolen goods, x. 12.

to enter clubs, xiv. 51.

## SEARCHES ; SEARCH FOR INCUM-

BRANCES, xi. 109, 119, 120.

against consenters, xi. 121, 122.

against heritable creditors, ii. 180 ; xi. 121.

against life-renters, xi. 121.

against married women, xi. 121.

against minors, xi. 121.

against pupils, xi. 121.

against trustees, xi. 120.

against entails, xi. 122.

against lands in several counties, xi. 120.

against leasehold property, xi. 119.

against new feu, xi. 120.

burgage subjects, ii. 255, 256 ; xi. 119.

continuation of, xi. 120.

duty of agent, xi. 109.

memorandum for search, xi. 118.

method of search, xi. 113.

period of search, xi. 114.

registers, xi. 111.

where no title for forty years, xi. 119.

incumbrances not disclosed, xi. 122.

official and non-official, xi. 110.

## SEASHORE—

bounding charter, ii. 205.

grant of barony, xiii. 239.

public right to, xi. 100-103.

railways, x. 138.

**SEATS—**  
 in churches, xi. 126.  
 burghal churches, xi. 130.  
 Highland church, xi. 131.  
 landward parish, xi. 126–130.  
 landward burghal parish, xi. 130.  
*quoad sacra*, xi. 131.  
 assessment on holder, xiv. 38.  
 cushions and carpets, xi. 126.  
 succession to, xi. 132.  
 for shop assistants, xiv. 78.

**SEAWARE**, xiii. 240.  
 right to, xi. 102.

**SEAWORTHINESS**, xi. 132.  
 questions with crew, xi. 135.  
 questions with charterers and cargo owners, xi. 135.  
 questions with insurers, viii. 226; xi. 136.

**SECOND NOTES OF SUSPENSION**, xii. 215.  
 at common law, xii. 215, 216.

**SECONDARY CREDITORS**. *See* Creditors.

**SECRET PROFITS**. *See* Liability.

**SECRET TRUST**. *See* Absolute Disposition; Trust.

**SECRETARY—**  
 joint stock companies, vii. 141.  
 for Scotland, xi. 138.  
 alkali works, i. 206.  
 allotments, i. 209.  
 County Council, iii. 357, 362, 363.  
 locomotives, viii. 142.  
 licences, ix. 246, 247.  
 penal servitude, ix. 246.  
 reformatories, State inebriate, xiii. 245.  
 reformatories, certified inebriate, xiii. 245.  
 sale of foods and drugs, ix. 58.  
 swans, xii. 222.  
 trawling, xii. 301–305.

**of State—**  
 of Anatomy Act, i. 222.  
 billeting, ii. 138.  
 birds, protection of wild, ii. 139.  
 Coal Mines Regulation Acts, iii. 69–77.  
 explosive substances, v. 179.  
 Factory and Workshop Acts, v. 212–249.  
 prisons, x. 29.  
 passports, xiii. 275.

**SECURED CREDITORS—**  
 in sequestration, xi. 188.

**SECURITIES**, xi. 139. *See* Absolute Disposition; Assignment; Banker's Lien; Bill of Lading; Blank Transfer; Bond; Document of Title; Heritable Security; Negotiable Instrument; Debentures.

definition, xi. 139, 142.

constitution of, xi. 141.  
 elements in constitution of, xi. 141.  
 subjects assignable in, xi. 141, 145.  
 recognised methods of conveyance, xi. 142.  
 statutory forms not obligatory, xi. 143.  
 not requiring possession, iv. 186; xi. 143.  
 scope depends on title, xi. 144.  
 incomplete, xi. 142.

**moveables—**  
 fungibles, vi. 98.  
 furniture, xi. 145.  
 goods in warehouse, xi. 146.  
 goodwill, vi. 134.  
 in form of sale, xi. 39, 53.  
 machinery, xi. 145, 146.  
 pledge, ix. 281.  
 shares in friendly societies, vi. 89.  
 trade fixtures, xi. 146.

**subjects involving liability—**  
 business of trader, xi. 149.  
 leases, vii. 339; ix. 147.  
 policies of insurance, ii. 172, 180; viii. 107; xi. 151.  
 profits, xi. 149.  
 rights of partnership, xi. 148.

**rights of creditors—**  
 collateral advantages, xi. 151.  
 to realise, xi. 144.  
 irritancies, xi. 152.  
 obligations of creditor, xi. 153.  
 to assign, xi. 153.  
 limitation of right to realise, xi. 155.  
 creditor cannot purchase subjects, xi. 156.  
 right of redemption, xi. 156.  
 competing with diligence, xi. 157.  
 in bankruptcy, xi. 157–161. *See* Bankruptcy.

Stamp Acts, xi. 429, 433–440, 450, 456.  
 guaranteed by Parliament, xii. 372.  
 cautioner's right to, ii. 53.  
 collateral, iii. 86.  
 failure of, ii. 291.  
 secondary, ii. 309.

- SECURITY OF RESERVOIRS, xiii.  
  180.
- SEDERUNT, ACT OF, i. 60.
- SEDERUNT BOOK—  
  *cessio bonorum*, i. 39 ; ii. 368.  
  in sequestration, i. 39.
- SEDERUNT, BOOKS OF, ii. 193.
- SEDITION, xi. 161 ; vii. 365.
- SEDUCING ROYAL FORCES TO  
  MUTINY OR DESERTION, xi. 162.  
    See Desertion.
- SEDUCTION, xi. 162 ; viii. 190.  
  *actio personalis moritur cum persona*,  
    i. 65.  
  solatium for, xi. 366.
- SEEDS—  
  sale of, xi. 32.
- SEIZURE—  
  of pirated copies of music, xiv. 21.
- SELF-DEFENCE. *See* Culpable Homicide ;  
  Assault.  
  civil liability for assault, i. 330.
- SELLER. *See* Sale.  
  bidding at auction, x. 117.
- SEMIPLENA PROBATIO, xi. 163.
- SENATORS OF COLLEGE OF JUSTICE—  
  *See* College of Justice.
- SENATUS ACADEMICUS, xiii. 43.
- SENTENCE, xi. 164.  
  pleas in bar of, xi. 165. *See* Capital Punishment.
- SEPARATION (OF SPOUSES). *See*  
  Judicial Separation.
- SEPTENNIAL PRESCRIPTION. *See*  
  Prescription.
- SEPULCHRES, VIOLATING, xiii. 123.
- SEQUELS, xi. 166. *See* Thirlage.
- SEQUESTRATION, xi. 166. *See* Bankruptey ; Composition ; Contract ; Oath in Bankruptey ; Trust Deed ; Trustee in Bankruptey ; Securities.
- who may be sequestered—  
  living debtor, xi. 167 ; ix. 180.  
  deceased debtor, xi. 169.  
  creditor's qualification, ii. 258 ; xi. 170-172.  
  petition for, ii. 70 ; xi. 172.  
  competing petitions, xi. 173.  
  productions, xi. 174.  
  *induciae* of citation, vi. 322.  
  computation of time, xii. 262, 263.  
  award of, xi. 175 ; xiv. 76.
- SEQUESTRATION—*continued*.  
  recall of, xi. 177.  
  grounds of, xi. 178.  
  proceedings other than, xi. 180.  
  abuse of civil process, iii. 45.  
  registration and publication, i. 9 ; xi. 117, 181.  
  interim preservation of estate, xi. 182.  
  claims for voting, xi. 183.  
    form of oath, xi. 183.  
    rectification of oaths, xi. 186.  
  account and vouchers, xi. 186 ; xii. 313.  
  annuities, xi. 189.  
  assignees, xi. 189.  
  contingent claims, xi. 189.  
  secured debts, xi. 188.  
  mandatories, xi. 189.  
  first meeting, xi. 190.  
  trustee's qualification, xi. 192.  
  election of trustee, xi. 193.  
  caution by trustee, xi. 193.  
  confirmation of trustee, xi. 194.  
  objections to trustee, xi. 194.  
  commissioners, iii. 117 ; xi. 195.  
  examination of bankrupt, xi. 196.  
  relation to diligence, iv. 234 ; xi. 198.  
    adjudication, xi. 198.  
    arrestment and poinding, xi. 199.  
    deceased debtor, xi. 200.  
    landlord's hypothec, xi. 200.  
    maills and duties, xi. 200.  
    poinding of the ground, xi. 199.  
  vesting of estate in trustee, xi. 200.  
    *acquirenda*, xi. 207 ; xii. 136.  
    aliens and preferences, xi. 209.  
    contracts, xi. 210.  
    heritable estate, ii. 244 ; xi. 205.  
    moveable estate, xi. 204.  
    pensions, etc., xi. 209.  
    personal powers of bankrupt, xi. 213.  
    property held by bankrupt as trustee, xi. 213.  
  real estate in England, etc., xi. 206.  
  reputed ownership, xi. 214.  
  rights of action, xi. 210.  
  wife's property, xi. 212.  
management and realisation, xi. 215.  
  second meeting, xi. 215.  
  sale of heritable estate, xi. 218, 219.  
  sale of moveable estate, xi. 219.  
  outstanding estate, xi. 219.

SEQUESTRATION—*continued.*

ranking and payment—  
divisible fund, xi. 220.  
proof of claims for ranking, xi. 220.  
special rules for ranking, xi. 221.  
interest and discount, xi. 221.  
secured creditors, xi. 221 ; xiv. 76.  
privileged creditors, xi. 222.  
contingent and annuity creditors, xi.  
    222.  
inhibitions, xi. 222.  
double ranking—  
    cautioners and co-obligants, xi. 222.  
partial payments, xi. 224.  
adjudication on claims, xi. 224.  
appeal against trustee's deliverances,  
    xi. 226.  
payment of dividends, xi. 227.  
unclaimed dividends, xi. 227.  
discharge of bankrupt without composi-  
    tion—  
application for discharge, xi. 228.  
award of discharge, xi. 230.  
effect of discharge, xi. 231.  
company and partners, xi. 223.  
preferences and collective agreements  
    for procuring, xi. 233.  
does not free bankrupt from Crown  
    debts, xi. 232.  
partnership, ix. 181.  
composition contract—  
offer and acceptance, xi. 234.  
objections to approval, xi. 237.  
judicial approval, xi. 236.  
payment, xi. 239.  
discharge of bankrupt, xi. 237.  
effect of discharge, xi. 238.  
annulling, xi. 240.  
deed of arrangement, iv. 128 ; xi. 241.  
judicial proceedings, appeals, xi. 242-  
    246.  
reclaiming note, x. 223.  
appeal to House of Lords, xi. 246.  
the trustee, xi. 246-251.  
the bankrupt, xi. 251 ; xiv. 77.  
the creditors, xi. 253.  
accountant of Court, i. 39 ; xi. 255.  
register of, i. 39.  
unclaimed dividends, i. 39.  
forms in, xi. 190, 257-263.

SEQESTRATION FOR RENT.     *See*  
    Hypothec.

SERVANT. *See* Master and Servant ;  
    Hiring ; Railway, etc.  
of ambassador, i. 213, 214.  
of post office, ix. 370.  
SERVICE.     *See* Hiring ; Master and  
    Servant.  
in navy, xiii. 256.  
brieve of, ii. 220.  
of appeal—  
    Circuit Court, i. 251.  
    House of Lords, i. 269.  
    Quarter Sessions, i. 275.  
of complaints by constable, iii. 233.  
of election petition, v. 4.  
    municipal, v. 14.  
of summons—  
    acceptance, i. 26 ; iii. 29.  
    form of acceptance, i. 252.  
    adjudication, action of, i. 26.  
    of augmentation, i. 357, 358.  
    objections to, xii. 148.  
SERVICE OF HEIRS, ix. 34 ; xi. 263.  
general, xi. 264 ; xii. 54.  
    appeals, xii. 54.  
special, xi. 264 ; xii. 55.  
general and special, xii. 55.  
evidence required, ii. 385.  
appeal to House of Lords, xii. 54.  
Sheriff of Chancery, i. 247.  
SERVICE TO TERCE, xii. 49, 50, 243 ;  
    xiii. 68.  
SERVICE TO TUG, xii. 401.  
SERVICES—  
    commutation of, xii. 160, 161.  
    personal. *See* Personal Services.  
SERVITUDE—  
    penal, ix. 245.  
SERVITUDES, xi. 264. *See* Aquæductus ;  
    Aquæhaustus ; Building Restrictions ;  
    Joint and Several Rights ; Common  
    Pasturage ; Drainage ; Mines and  
    Minerals ; Eavesdrop ; Water Support.  
rules regarding exercise of, xi. 265-268.  
definition and classification of, xi. 264.  
what may be the dominant tenement,  
    xi. 268-271.  
what burdens may be, ii. 151 ; xi. 271.  
constitution of—  
    positive, xi. 273 ; xiv. 77.  
    implied grant or reservation, vii. 75 ;  
        ix. 94 ; xi. 275.  
prescription, ix. 403 ; xi. 277.

SERVITUDIES—*continued.*

constitution of—*continued.*

  acquiescence, xi. 280.

  decrees, statute, etc., xi. 280.

negative, xi. 280; xiv. 77.

*altius non tollendi*, i. 210.

  of light, viii. 122.

  assignation of, i. 333.

extinction of—

  discharge, xi. 281; xiv. 77.

  by force of statute, xi. 281.

confusion, xi. 283; iii. 201.

prescription, xi. 283.

  acquiescence, xi. 284.

change of circumstances, xi. 284.

  temporary rights, xi. 285.

distinctions between other rights, xi. 285.

particular, xi. 286.

actions and jurisdiction, ix. 363; xi. 287.  
  310.

## SESSION CLERK, iii. 14.

*ad vitam aut culpam*, i. 141.

SESSION, COURT OF. *See* Court of Session.SESSION, KIRK. *See* Church Courts.

## SESSIONS OF THE PEACE, xi. 295.

*See* Justice of the Peace.

set and sale, xi. 330.

SET-OFF. *See* Compensation.

  principal and agent, x. 24.

## SETTLEMENT, ix. 341; xi. 296; xiv. 61.

*See* Lunacy Acts.

  by birth, xi. 297.

  by marriage, xi. 301.

  by parentage, xi. 298.

*forisfamiliation*, xi. 300.

    illegitimate children, xi. 299.

    legitimate children, xi. 298.

  by residents, xi. 302; xiv. 61.

  of pauper lunatics, ix. 343; xi. 303.

*See* Will.

## SETTLEMENT ESTATE DUTY, v. 102.

## SEWAGE—

  nuisance, ix. 39.

  pollution of river, x. 364.

  Public Health Acts, x. 103.

SHAREHOLDER. *See* Company.

  title to sue, xii. 277.

SHARES. *See* Company; Ship.

  friendly societies, vi. 89.

SHEBEEING. *See* Licensing Acts.

  evidence of, viii. 70.

## SHEEP, xi. 304.

## SHEEP WORRYING, i. 224.

## SHEPHERDS' DOGS, iv. 315.

## SHERIFF, xi. 306; xiv. 77.

  executive and administrative duties of office, xi. 320.

  proof in view, xiii. 122.

## SHERIFF OF CHANCERY, ii. 382, 385; x. 2.

  appeal from, i. 247.

SHERIFF SUBSTITUTE, xi. 307. *See* Stipendiary Magistrate.

  salaries, xii. 15.

  annuity to, xii. 15.

  honorary, xi. 307.

  franchise, xiv. 36.

## SHERIFF CLERK, xiii. 276.

  as county assessor, i. 331.

  interim appointment, xiii. 276.

  returns to accountant, i. 39.

SHERIFF COURT, xi. 305. *See* Small

  Debt Court; Debts Recovery Court;

  Employers' Liability Act; Appeal;

  Wakening; Decree; Arrestment;

  Reponing; Action; Fatal Accident

  Inquiries; Interlocutor; Record.

certificate of judgment, ii. 355.

certification, ii. 357.

conjoining of actions, iii. 203.

debate, iv. 102.

decerniture, iv. 116.

defences, iv. 158.

diligence to recover documents, xi. 379.

employment of counsel, v. 177.

entering appearance, i. 280.

findings, v. 329.

extracts in, v. 196.

jurisdiction—

  aliment, i. 203; xi. 309.

  custody of children, iv. 57; xi. 310.

  criminal, iii. 381; xi. 320; xiv. 78.

  damages, xi. 308.

  maritime, xi. 308, 309.

  moveables, xi. 308.

  status, xi. 309.

*meditatio fugæ*, xi. 315.

  transference, xi. 315.

  bankruptcy and insolvency, xi. 172,

  228, 312.

  constitution, xi. 314.

  exhibition, xi. 314.

  forthcoming, xi. 315; vi. 103.

SHERIFF COURT—*continued.*jurisdiction—*continued.*

- removings and objections, xi. 314.
  - sequestration for rent, xi. 314.
  - declarators, xi. 313; iv. 121.
  - actions of division, etc., iv. 306; xi. 313.
  - proving the tenor, x. 79; xi. 313.
  - multiplepoinding, xi. 313.
  - exemptions, xi. 319, 320.
  - heritage, xi. 310.
  - adjudication, xi. 311.
  - division of commonalty, iv. 306; xi. 311.
  - entails, v. 55; xi. 311.
  - feu-duties, xi. 310; xii. 179.
  - Heritable Securities Act, ii. 179.
  - leases and rent, viii. 183; xi. 311.
  - marches, xi. 311.
  - nuisance and servitude, xi. 288, 289, 310.
  - possession, xi. 311.
  - judicial factors, etc., vii. 173, 175, 198; xi. 311.
  - contracts within sheriffdom, xi. 318.
  - delict within sheriffdom, xi. 318.
  - place of business, xi. 317.
  - property in sheriffdom, xi. 318.
  - residenee, xi. 316.
  - prorogation, xi. 318.
  - reconvention, xi. 319.
  - ad factum præstandum*, xi. 312; xii. 210.
  - payment of money, xi. 312.
  - suspensions and interdict, vii. 28; ix. 220; xi. 312; xii. 215, 217, 218.
  - possessory actions, ix. 362; xi. 312.
  - privative jurisdiction, xi. 315.
  - reduction, v. 133; xi. 313.
  - succeession, xi. 311.
  - appeal to Sheriff, i. 277.
  - Finance Acts, v. 329.
  - Lanarkshire, i. 15.
  - nautical assessors, i. 332.
- SHERIFF COURT BOOKS. x. 246.
- SHERIFF COURT HOUSES ACT, 1860-1884, x. 209.
- SHERIFF OFFICER, xi. 326. *See* Messenger-at-arms.
- citation of witnesses, xiii. 162.
- removing tenants, xii. 235.
- search warrant, xi. 125, 126.
- SHETLAND ISLANDS—
- whales, xiii. 188.

- SHIP; SHIPPING, xi. 326; xiii. 240. *See* Bottomry; Collision; Ports and Harbours; *Respondentia*; Lien; Salvage; Shipmaster; Charter; Freight; Bill of Lading; Hypothec; Seamen; Seaworthiness; Ship's Husband; Tug and Tow; Wreck; Marine Insurance; Pilot; Demurrage.
- definition, xi. 326.
- shares in, xi. 327; xiii. 241.
- who can hold shares, ix. 174; xi. 327; xiii. 240.
- shares transferred by bill of sale, xi. 327; xiii. 241.
- alien acquiring, i. 190.
- arrestment and sale, i. 312, 322; vi. 102; vii. 223.
- shares arrestable, i. 313.
- bill of health, ii. 125.
- Board of Trade, xi. 332, 333; xiii. 241, 242.
- British flag, xi. 327; xiii. 241.
- carrying passengers, xi. 331.
- cartel, ii. 306.
- certificate of registry of, ii. 355; xiii. 241.
- change of name, xiii. 241.
- crime, xiii. 243.
- damaged in harbour, ix. 356.
- English jurisdiction, xiii. 242.
- explosive substances, v. 181.
- general, vi. 119.
- income tax, xi. 334.
- jurisdiction, xi. 98.
- liability of owners, xi. 330, 333, 334; xiv. 78.
- liability for deviation, iv. 219.
- log-book, viii. 154.
- management, xiii. 242.
- mortgages, xi. 143, 327; xiii. 241.
- registration of mortgages, xi. 143, 327; xiii. 241.
- mortgagees of shares, xi. 329.
- rights of mortgagee, xi. 328.
- mortgagee's right of sale, xiii. 241.
- mortgagee taking possession, xi. 329.
- petroleum, carrying of, ix. 264.
- Public Health Acts, x. 113.
- registered name of, xi. 327.
- registers, xi. 327; xiii. 241.
- regulations at sea, xi. 99.
- passport, xiii. 275. ,

SHIP; SHIPPING—*continued.*

pointing of, ix. 295.  
prize law, x. 51.  
reparation, x. 301.  
sale of, xi. 25; xiii. 241.

    unfinished, xi. 39.

set and sale, xi. 330.  
building, xi. 327, 334.

flag, ii. 398.

smuggling, xi. 363.

succession, xii. 126, 127.

unfinished, xi. 334.

usage, xiii. 48.

warranty to cargo owners, xi. 135.

warranty to insurers, xi. 137.

SHIPMASTER, xi. 336. *See* Barratry;

Bottomry; Bill of Lading; Charter-

Party; *Respondentia*.

agent of underwriter, i. 7.

authority in port, xi. 337.

dismissal of, xi. 339.

engaging seamen, xi. 104.

hat money, vi. 161.

liability for contracts, xi. 337.

maintaining order and discipline, xi. 338.

*nautæ, caupones, stabularii*, viii. 400.

pledging for necessaries or repairs, xi. 337.

post office offences, ix. 369.

rights, liens, and remedies, vi. 249, 251;

xi. 339.

salvage, xi. 69, 84.

seaworthiness of ship, xi. 134, 135.

selling cargo, i. 367, 165.

title to sue, xii. 276.

using force, i. 330.

whipping by, xiii. 189.

## SHIP'S HUSBAND, xi. 335.

appointment, xi. 335.

authority to give orders, xi. 335.

can delegate authority, xi. 336.

duties, xi. 335.

duty to account, xi. 336.

liability for contracts, xi. 336.

right to borrow, xi. 335.

## SHOOTINGS, LEASES OF, vii. 347.

## SHOP ASSISTANTS, xiv. 78.

## SHOP CLUBS ACT, 1902, xiv. 18.

## SHOP HOURS REGULATION ACTS, xi. 339.

SHORE. *See* Seashore.

## SHORTHAND WRITER, x. 71.

## SHORT TITLES, xi. 339.

*SI SINE LIBERIS.* *See* *Conditio si sine liberis.*

SICK BILL, ii. 124.

SIGNATURE. *See* Deeds, Execution of.  
bills of exchange, ii. 81, 85–90, 93–107, 112.

holograph wills, xiii. 197, 198.

of agent, ii. 230.

of baron, ii. 33.

on erasure, v. 88.

## SIGNET—

letters of arrestment, i. 321.

## SIGNET LETTERS—

bill for, ii. 66.

## SIGNET OFFICE—

apprentices' indentures, xiii. 227.

## SIGNET SEAL, xi. 103.

SIGNET, SUMMONS PASSING, i. 74; xii. 147.

SIGNET, WRITERS TO. *See* Writers to the Signet.

## SILENCE—

putting to, xii. 277.

## SILVER—

bullion, ii. 239.

treasure-trove, xii. 309.

SILVER AND GOLD PLATE, xi. 340.

SILVER MINES, vi. 125.

## SINE QUO NON—

executors, v. 147.

trustees, xii. 351.

tutors, xiii. 7.

SINGLE BILLS, xi. 341. *See* Rolls.

abandonment of appeal, i. 261.

petitions, ix. 261.

SINGULAR SUCCESSORS, xi. 341.

casualty to superior, xii. 169, 178.

obligations under *oneris ferendi*, ix. 95.

reparation, x. 287.

restrictions as to nuisances, ix. 50.

sisting as defender, i. 218.

real money burden, ii. 242.

under leases, xi. 342.

sisting diligence, xii. 212, 216.

mandatary, viii. 195.

*dominus litis*, iv. 331.

new defenders, i. 71.

new parties, xii. 149.

process, xi. 344.

representatives, i. 71; iv. 98.

trustee in bankruptcy, xi. 210.

Small Debt Court, xi. 355.

stays execution of the decree, xii. 212.

## SISTERS—

aliment of, i. 198 ; vii. 190.  
alimenting married, i. 199.

## SKILLED EVIDENCE, ix. 96.

## SLAINS, LETTERS OF, xi. 345.

SLANDER. *See* Defamation; Reparation.

adoption of, i. 135.  
apology, i. 243.  
by wife, x. 287.  
charaeter of the parties, ii. 388.  
character of servant, ii. 388.  
contempt of Court, iii. 253.  
malice, viii. 190 ; x. 288.  
of candidate, iii. 342-344.  
of parliamentary candidate, ii. 284.  
tender, xii. 239.  
of title, ix. 227 ; xi. 347.

## SLAUGHTER—

of diseased animals, iii. 245.

## SLAUGHTER - HOUSES ; KNACKERS'

YARDS, x. 95 ; xi. 347.

by-laws, xi. 348.  
provision of, xi. 349.  
licences, xi. 347.  
appeal, xi. 348.

## SLEEPING PROCESS, xiii. 145.

## SMALL DEBT COURT (SHERIFF), xi.

350.

jurisdiction, xi. 350.  
competent actions, xi. 352.  
conduct of proceedings, xi. 351.  
procedure, xi. 353.  
imprisonment, xi. 358.  
multiplepoinding, xi. 358.  
furthcoming vi. 103 ; xi. 358.  
sequestration for rent, xi. 358.  
cjections, xi. 359.  
penalties, recovery of, incompetent, ix.  
249.

form of summons, xii. 151.

Employers and Workmen Act, i. 290 ;  
viii. 307 ; xi. 359.

appeal, xi. 360.

suspension, xii. 209 ; xiv. 80.

justice of the peace, xi. 361.

SMALL DEBT CIRCUIT COURT, i. 255 ;  
iii. 21.SMALL DWELLINGS ACQUISITION  
ACT, xiv. 38.

## SMALL ESTATES ACT, xii. 133.

amendment of, xiv. 31.

SMOKE, xi. 362. *See* Nuisance.

Nuisance Abatement (Scotland) Acts,  
1857, 1861, and 1865, xi. 362.  
offenders, xi. 363.  
those entitled to prosecute, xi. 363.  
proceedings under Act, xi. 363.  
penalty, xi. 363.

## SMUGGLING, xi. 363.

offences, xi. 365.  
searching ships and persons, xi. 364.

## SNIPE, viii. 48 ; xi. 365.

## SOCIETIES—

benevolent, vi. 74.  
building, ii. 237.  
cattle insurance, vi. 74.  
change of name, vi. 80.  
citation of, iii. 29.  
collecting, vi. 87.  
debating, iv. 102.  
friendly, vi. 72.  
industrial and provident, vi. 322.  
of law agents, vii. 325.  
poor rates, x. 190.  
specially authorised, vi. 74.  
with branches, vi. 76.  
legaey to, xii. 114, 115.  
of solicitors in the Supreme Courts, vii.  
307 ; xi. 369.  
title to sue, xii. 276.

SOCIUS CRIMINIS. *See* Accessary.

## SODOMY, xi. 365.

SOLATIUM, xi. 365. *See* Damages,  
Measure of ; Reparation ; Title to Sue.  
abuse of processes, xi. 366.  
breach of promise, xi. 366.  
bodily injury, xi. 366.  
seduction, xi. 366.  
action competent to relatives, xi. 367, 368.  
transmissibility of actions, xi. 367.

SOLDIERS. *See* Army.

billeting, ii. 136.  
illegitimate children, i. 309.  
judicial mandatory, xiv. 53.  
marriage, i. 309 ; x. 266.  
nuncupative will by, viii. 334.  
children born abroad, i. 186.  
creditors, i. 309.  
offences, i. 309.  
savings bank, xi. 92.

SOLICITOR, xi. 369. *See* Law Agent.

Colonial, xiv. 19.

in the Supreme Courts, viii. 307 ; xi. 369.

SOLICITOR-GENERAL, i. 150; xi. 371.  
**SOLUM**—  
 of tenement, iii. 132.  
 SOLWAY FISHING, vi. 20.  
 SOVEREIGN, xi. 371.  
 constitutional position, xi. 371.  
 allegiance to, i. 207.  
 assaults in presence of, i. 329.  
 landed property, xi. 373; xii. 52.  
 paternal power of, xi. 374.  
 royal prerogative, xi. 372.  
 royal revenue, xi. 373.  
 spouse of, xi. 371.  
 SOWMING AND ROWMING, xi. 374.  
 SPECIAL CASE, xi. 374.  
 parties, xi. 375.  
 competency, xi. 375.  
 forms of process, xi. 375.  
 signed by counsel, i. 148.  
 election petition (parliamentary), v. 7.  
 SPECIAL CONSTABLES, iii. 235, 237.  
 SPECIAL LEGACY. *See* Legacy.  
 SPECIAL POWERS. *See* Administrator-in - Law; *Curator bonis*; Entail; Judicial Factor; Trustees; Tutor; Company.  
 SPECIFIC—  
 implement or damages, iv. 78.  
 performance, xi. 375.  
*SPECIFICATIO*, xi. 377.  
 SPECIFICATION—  
 acquisition of property by, xi. 377.  
 and diligence for recovery of writings, xi. 378; xiv. 78.  
 granted in all actions, xi. 378.  
 Church Courts, xi. 379.  
 Sheriff Court, xi. 379.  
 Inner House, xi. 380.  
 when granted, xi. 380.  
 appointment of commissioner, xi. 380.  
 documents recoverable, xi. 381, 384.  
 procedure at commission, xi. 384.  
 evidence of havers, xi. 386.  
 excerpts, xi. 386.  
*SPEI EMPTIO*, xi. 387.  
*SPES SUCCESSIONIS*, xi. 389; xii. 35, 36, 71, 72, 97, 98, 136; xiii. 64.  
 assignees' rights, xii. 42.  
 children as creditors, xiii. 117.  
 diligence incompetent against, xiii. 65, 66.  
 SPIRITS—  
 dilution of, xi. 59. *See* Licensing Acts.

SPITTING—  
 assault by, i. 327.  
 SPLITTING—  
 of superiority, xii. 182.  
*SPONSIO LUDICRA*. *See* Gaming.  
 SPRING GUNS, xi. 390.  
 SPUILZIE, xi. 390. *See* Violent Profits; Vicious Intrusion.  
 SPY, xiii. 149.  
 ST. ANDREWS UNIVERSITY, xiii. 41.  
 STABBING, i. 328.  
 attempt to murder, i. 347.  
 STABLERS, vi. 219.  
*nautæ, caupones, stabularii*, viii. 402.  
 STAIR—  
 common, iii. 133.  
 STAMPS, xi. 392-465.  
 adhesive stamps, xi. 396.  
 inchoate bills, ii. 86.  
 appropriated, xi. 398.  
 articles of roup, i. 325.  
 denoting, xi. 398.  
 duties imposed by Acts, xi. 409.  
 duties on instruments, xi. 409.  
 recovery of penalties, xi. 406.  
 sale of, xi. 407.  
 stamping after execution, xi. 402.  
 stamping of instruments, xi. 394.  
 adjudication, xi. 398.  
 interpretation clause of Stamp Act, xi. 393.  
 construction of statute and instruments, xi. 393.  
 stamping of instruments, xi. 394.  
 impressed stamps, xi. 396.  
 cancellation, xi. 397.  
 fraudulent removal, xi. 397.  
 production of instrument in evidence, xi. 400.  
 expense of, after stamping, xi. 400.  
 entries upon rolls, books, etc., xi. 403.  
 duty on capital of companies, xi. 403.  
 Colonial Stock Acts, xi. 404.  
 assignation of policy to insurance company, xi. 406.  
 instruments relating to crown property, xi. 406.  
 discount to purchasers, xi. 407.  
 stamp offences, xi. 407.  
 recovery of money received for duty, xi. 407.  
 allowance for spoilt stamps, xi. 407.

STAMPS—*continued.*

stamp duties imposed by other Acts, xi. 409.  
 Conveyancing (Scotland) Act 1874, xi. 409.  
 general exemptions from all other stamp duties, xi. 410.  
 special exemptions, xi. 410–416.  
 schedule of duties under Stamp Act, xi. 416.  
 admission, xi. 416.  
 affidavit, xi. 418.  
 agreement, xi. 418.  
 annuities, i. 235; xi. 420.  
 appointment, xi. 420.  
 appraisement, xi. 420.  
 apprenticeship, vii. 309; xi. 422.  
 articles of clerkship, xi. 422.  
 award, xi. 423.  
 bank notes, xi. 423.  
 bill of exchange, ii. 103, 114; xi. 423–427.  
 bill of lading, xi. 427.  
 bill of sale, xi. 428.  
 blank bill, ii. 142.  
 bond, xi. 428–430, 452.  
 bond of corroboration, ii. 185.  
 bought and sold note, i. 203.  
 building societies, iii. 238.  
 certificate, vii. 313; xi. 430, 431.  
 charter, xi. 431.  
 charter party, ii. 397; xi. 491.  
 cheques, ii. 410.  
 commission, xi. 432.  
 contract note, xi. 432.  
 conveyance and sale, ix. 376; xi. 433–440.  
 copy or extract, xi. 440.  
 debentures, iv. 106; xi. 442, 452.  
 declaration, xi. 442.  
 deed not described, xi. 442.  
 delivery order, xi. 443.  
 deputation, xi. 443.  
 deposit receipt, iv. 203.  
 disposition of property not described, xi. 443.  
 discharge of heritable security, iv. 240.  
 docquet, xi. 443.  
 duplicates of instruments, xi. 443.  
 exchange or excambion, xi. 444.  
 exemplification or constat, xi. 444.  
 faculty, xi. 444.

STAMPS—*continued.*

schedule of duties under Stamp Act—*continued.*  
 feu-charter, v. 282.  
 grants or letters patent, xi. 444.  
 I.O.U., vii. 67.  
 lease, xi. 445.  
 letter of allotment, xi. 448.  
 letter of guarantee to a bank, viii. 39.  
 letters of marque and reprisal, xi. 450.  
 licence, xi. 450.  
 life policies, viii. 104; xi. 458.  
 marine insurance, viii. 221; xi. 456, 458.  
 marriage contract, viii. 281.  
 mortgage, xi. 452.  
 Notarial Act, xi. 456.  
 partition or division, xi. 456.  
 passport, xi. 456.  
 policy against accident, xi. 458.  
 power of attorney, xi. 448.  
 precept of *clerc constat*, xi. 459.  
 procuration, xi. 459.  
 promissory notes, x. 70.  
 protest, ii. 115; xi. 459.  
 real burdens, ii. 242, 243.  
 receipt, xi. 459–461.  
 release or renunciation, xi. 461.  
 resignation, xi. 461.  
 revocation, xi. 461.  
 securities, xi. 450.  
 seisin and notarial instrument, xi. 461.  
 settlement, xi. 462.  
 share warrant, xi. 464.  
 stock certificate, xi. 464.  
 surrender, xi. 464.  
 transfer, xi. 464.  
 voting paper, xi. 465; x. 88.  
 warrant, xi. 465.  
 will, xiii. 202.  
 writ, xi. 465.  
 appeal, xi. 398.

STANDING JOINT COMMITTEE, xii. 1.  
*See* Constable; County Council.

STANDING ORDERS—  
 House of Lords, i. 269. *See* Private Bill.

STATE *See* Secretary.  
 confidential communications, iii. 186.  
 officers of, ix. 93.

STATED CASE, i. 265.  
 Quarter Sessions, i. 274.

Workmen's Compensation Act, xiii. 224.

- STATEMENT OF FACTS. *See* Defences ;  
Suspension.
- STATIONS, RAILWAY, x. 159.
- STATUS—  
*bona fides* as affecting, ii. 161.  
of alien, i. 188
- STATUTE LAW, xii. 1. *See* Act of Parliament.  
collections of Acts, xii. 2.  
classification of Statutes, xii. 2.  
Statutes applying to Scotland, xii. 2.  
parts of Act of Parliament, xii. 3.  
title or rubric, xii. 3.  
preamble, xii. 3.  
enacting sections, xii. 4.  
date, xii. 4.  
schedule, xii. 4.  
short titles, xi. 339.  
interpretation, xii. 4.  
permissive and imperative words, xii. 7.  
clause, xii. 7.  
technical terms in general Act, xii. 7.  
Interpretation Act, 1889, xii. 7.  
repeal, xii. 7.  
publication of Acts of Parliament, xii. 8.  
date of commencement, xii. 8.  
citation of Acts of Parliament, xii. 8.
- STATUTE LAW REVISION, xii. 9.
- STATUTORY—  
alien, i. 187.  
arbitrations, i. 304.  
diets, iii. 261.  
intimation of assignation, i. 335.  
offences, iii. 387.  
penalties, ix. 247. *See* Penalties.  
rules and orders, xii. 11.  
printing, numbering, and sale, xii. 11.  
definitions, xii. 12.
- STEALING. *See* Theft.  
cattle, ii. 311.
- STEELBOW, ix. 184 ; xii. 12.
- STEEL NETS, vi. 14. *See* Fishings.
- STEPFATHER, ALIMENT, i. 192.
- STEPSMOTHER, ALIMENT, i. 192.
- STILLICIDE, iv. 365.
- STIPEND, xii. 13. *See* Teinds ; Fairs  
Prices.  
arrestment of minister's, i. 313.  
from Exchequer, xii. 13.
- STIPEND—*continued*.  
small, xii. 14.  
consignation, xii. 213.  
prescription, x. 129.
- STIPENDIARY MAGISTRATE, xii. 14.  
powers, xii. 15.  
salaries, xii. 15.  
annuity, xii. 15.  
removal of, xii. 15.
- STIRPES. *See* *Per capita* ; *Per stirpes*.
- STOCK. *See* Company ; Debenture.
- STOCKBROKER, xii. 18. *See* Broker ;  
Fraud ; Gaming and Betting ; Lien ;  
Principal and Agent.  
Banking Companies (Shares) Act, 1867,  
xii. 19.  
broker's obligations, xii. 20.  
broker's rights, xii. 21.  
settling, xii. 21.  
Stock Exchange rules, xii. 18.  
insolvency of, xii. 22.  
penalties, xii. 18-22.  
pledging securities, i. 394.  
principal's money, xii. 20.  
prescription, xii. 315.
- STOCK EXCHANGE, vii. 91.  
rules, xii. 18, 19.  
settling days, xii. 18, 19.  
London, xii. 18-22.
- STOCK-IN-TRADE—  
securities over, xi. 146.
- STOLEN GOODS. *See* Theft.  
*bona fide* purchaser, ii. 159.  
search for, x. 12.
- STONE QUARRY—  
lease of, vii. 347.
- STOPPAGE IN TRANSITU, xii. 22. *See*  
Agency ; Sale ; Document of Title.  
conditions, xii. 23.  
insolvent buyer, xii. 23.  
unpaid seller, i. 337 ; xii. 23.  
deviation of transit, xii. 24.  
method of exercising right, xii. 28.  
effect of, xii. 28.  
exclusion of right, i. 165 ; ii. 130 ; ix.  
284 ; xii. 29.
- STOUGHTRIEF, xii. 31. *See* Robbery.
- STRAIGHTENING OF MARCHES, xii.  
31. *See* Marches.
- STRANGERS—  
conjunct fees, xii. 70.

STRANGERS—*continued.*

conjunct rights, iii. 208.  
destination to, viii. 118.

## STRANGLE—

attempting to, i. 347.

STRAW, xii. 32. *See* Crop; Dung; Steel-bow.

STRAYS. *See* Waifs and Strays.

STREAMS. *See* Water; River.

STREETS. *See* Roads and Bridges.

games in, vi. 113.

laying pipes, xiii. 180, 181.

musicians, iii. 237.

opening for gas pipes, vi. 117.

provisions for lighting, vi. 118.

STRIKES, xii. 296–298.

STUDENTS. *See* Universities.

## SUB-CONTRACTOR—

indemnity from, xiii. 223.

Workmen's Compensation Act, xiii. 222, 224.

SUBINFEUDATION, ii. 37; xii. 32. *See* Superiority.

burgage, ii. 251.

prohibiting, iii. 175; xii. 176, 182.

## SUBJECTS—

allegiance of, i. 207.

assignable, xi. 145.

SUBMISSION. *See* Arbitration.

SUBORNATION OF PERJURY, ix. 257.

SUBROGATION, v. 334; xii. 34.

SUBSCRIPTION OF DEEDS. *See* Deeds (Execution of).

## SUBSCRIPTIONS—

friendly societies, vi. 89.

SUB-SALE. *See* Sale.

SUB-TENANT, REMOVING, xii. 234.

SUBSTITUTE; SUBSTITUTION, xii. 34.

*See* Legacies; Institute; Revocation;

Succession; Vesting.

moveables, xii. 36.

defeated, xii. 36.

heritage, xii. 35; iii. 205, 212.

must serve, xii. 35.

must complete title to securities, iv. 238.

clause of return, x. 340.

testamentary disposition, xii. 35.

presumptions, x. 8.

SUBSTITUTED ROAD, x. 139.

SUCCESSION, xii. 37; viii. 290–292. *See* Bastard; Collation; *Conditio si sine liberis*; Dead's Part; Deathbed; Double Title; *Donatio mortis causā*; Executor; Election; Heir; Institute; Legacies; Marriage-Contract; Passive Title; *Per capita*; *Per stirpes*; Appointment, Power of; Relief; Revocation; Satisfaction; Substitute; Trust; *Ultimus hæres*; Vesting; Wills.

presumption of life, xii. 38–40.

heritable and moveable—

corporeal subjects, xi. 132; xii. 40.

incorporeal rights, xii. 41.

British ships, xii. 126, 127.

conversion, xii. 42.

jurisdiction in, vii. 227.

minor altering course of, viii. 357.

tutor altering, xiii. 15.

intestate, heritage, xii. 44.

apparent heir, xii. 50.

conquest, iii. 210; xii. 48.

courtesy, iii. 370; xii. 50.

ground annual, vi. 142.

heirship moveables, xii. 53.

terce, xii. 49, 243.

representation, iii. 88; xii. 46.

birth of nearer heir, xii. 58.

methods of completing title, xii. 53–57.

intestate moveable, ii. 244; xii. 74.

distribution, xii. 83.

husband's property, xii. 82–85.

*jus relictæ*, xii. 81.

legitim, xii. 78; xiv. 79.

order of, xii. 77.

testate heritage, xii. 59.

conditions in settlement, xii. 73.

institution and substitution, xii. 60.

clause of return, xii. 64.

effect of general disposition, xii. 64.

conjunct fees, xii. 70.

entail, vi. 164; xii. 65.

lease, Crofters Acts, xii. 73; iii. 396.

marriage-contract, xii. 71.

will, v. 283, 284; xii. 59.

testate moveable, xii. 87.

destinations on bonds, vi. 181, 182, 192;

vii. 375; xii. 90.

liability of estate for debts, xii. 84, 127.

international law, xii. 134.

SUCCESSION DUTY. *See* Legacy and Succession Duty.

- SUCKEN; SUCKENER, xii. 140. *See* Thirlage.
- SUFFOCATE—  
attempting to, i. 347.
- SUICIDE—  
accident insurance, i. 32.  
life insurance, viii. 99.
- SUMMARY ROLL. *See* Rolls.
- SUMMARY CONVICTION. *See* Conviction.
- SUMMARY DILIGENCE ON BILLS OF EXCHANGE, xii. 141. *See* Bills of Exchange; Charge; Promissory Note; Suspension.  
at whose instance competent, xii. 141.  
against whom competent, xii. 141.  
when competent, xii. 142.  
householders' certificate of protest, xii. 143.  
sum for which competent, xii. 143.
- SUMMARY JURISDICTION. *See* Conviction.
- SUMMARY PROCEDURE. *See* Criminal Prosecution; Complaint.
- SUMMONS, iv. 355; xii. 143. *See* Amendment of Record; Pleas in Law; Partibus; Arrestment; Wakening; Calling; Condescendence; Service.  
calling, ii. 278.  
certification of, ii. 356.  
clerical error, iii. 52; xiv. 4.  
erasures in, v. 89.  
execution of, v. 138.  
lost, viii. 165.  
signeting of, i. 74; xii. 147.  
Court of Session—  
count, reckoning, and payment, xii. 145.  
declaration of trust, xii. 145.  
divorce, iii. 220; xii. 146.  
multiple poinding, viii. 378; xii. 146.  
proving of the tenor, x. 81.  
reduction, x. 232; xii. 145.  
amendment of, xii. 148.  
defended actions, xii. 149.  
undefended actions, xii. 148.  
repeating a, x. 303; xii. 150.  
supplementary, xii. 150.  
in Inferior Courts, xii. 151.  
Debts Recovery Court, iv. 114.
- SUNDAY, iv. 89; xii. 152. *See* Sabbath-Breaking.  
appeal to High Court, i. 265.  
bills falling due on, ii. 83.
- SUNDAY—continued.  
detention of prisoner, i. 374.  
verdict given on Sunday morning, iv. 89.  
when reckoned, xii. 263.
- SUPERCARGO, xii. 152.  
can alter course, xii. 152.
- SUPERFLUOUS LANDS—  
promoters holding, vii. 297.
- SUPERIOR AND VASSAL. *See* Superiority.  
attainder, i. 345; xii. 307.  
authorised nuisance, iv. 161.  
disposition of superiority to vassal, xii. 167.  
division of commony, iii. 142.  
enforcing conditions, vii. 34; ix. 50.  
fences, v. 259.  
fixtures, vi. 30.  
hypothec for feu-duty, vi. 249.  
implied entry not to affect superiors' rights, iii. 191; v. 57.  
incomplete title, xii. 155, 156.  
parts and pertinents, ix. 185.  
personal services, ix. 259.  
poinding of the ground, ix. 299.  
prescription by possession, ix. 397.  
retention between, x. 337.  
subinfeudation, xii. 32, 182.  
superior purchasing property, iv. 283.  
title to sue, xii. 279.
- SUPERIORITY, xii. 152. *See* Clare constat; Feu-Charter; Confirmation; Charter of Novodamus; Subinfeudation.  
duties of, xii. 155.  
rights of, iv. 329; xi. 128; xii. 158.  
duties and casualties, xii. 158, 177; xiv. 79.  
carriages and services, ix. 259.  
ward, xii. 158.  
blench, i. 185; xii. 159.  
mortification, xii. 160.  
burgage, xii. 160.  
fen-farm, xii. 160.  
casualties, xii. 167; xiv. 79.  
non-entry, iv. 107; v. 57; xii. 168.  
relief and composition, iv. 107; xii. 169.
- different escheat, v. 96; xii. 178.  
irritancy of the feu, vii. 68; xii. 178.  
reservations, ix. 185; xii. 179, 180.  
conditions, iii. 176; xii. 180.

**SUPERIORITY—continued.**

consolidation, iii. 221; ix. 29; xii. 183; xiv. 79.  
 notarial instrument, ix. 29  
 splitting of, xii. 182.  
 heritable securities over, xii. 183.  
 prescription, xii. 157.  
 mid, xii. 153, 154.  
 relinquishment of mid, xii. 157.  
 heirs-portioners, xii. 49.  
 life-renter in, viii. 114; xii. 156.  
 disposition of, iv. 280; xii. 182, 183.

**SUPERVISION—**

Board of, ii. 157.  
 order. *See Company.*  
 police, x. 10.

**SUPPLEMENT, LETTERS OF**, xii. 185.  
*See Citation.***SUPPLEMENTARY CONVEYANCE**, i. 47.**SUPPLEMENTARY SUMMONS**, xii. 150.**SUPPLY—**

Commissioners of, iii. 119.

**SUPPORT**, xii. 187; viii. 352.

natural to land, xii. 187.  
 from adjacent or subjacent soil, xii. 187.  
 extent of right and its effect, xii. 188.  
 when right of action emerges, xii. 188.  
 parties entitled to enforce obligation, xii. 194.  
 necessity for proof of actual damage, xii. 189.  
 right continued though built upon, xii. 190.  
 underground water, xii. 190.  
 variation of right by contract, xii. 191.  
 express or implied, xii. 191.  
 effect of severance, xii. 192.  
 construction of compensatory clauses, xii. 193.

buildings from adjoining lands, xii. 195.  
 servitude right, xii. 195.  
 how acquired, xii. 196.  
 acquired by implied grant, xii. 196.  
 extent of servitude right, xii. 197.  
 servitude by implied reservation, xii. 197.  
 servitude by prescriptive possession, xii. 198.  
 increase of burden, xii. 199.

**SUPPORT—continued.**

of buildings by buildings, xii. 200.  
*servitus oneris ferendi*, xii. 200.  
 servitude right, how acquired, xii. 200.

**SURFACE**. *See Support.*

damage, viii. 345.  
 water, xiii. 163–165.

**SURGEONS**, xiii. 246, 247, 251.  
 charter of incorporation, xiii. 247.  
**Factory and Workshop Acts**, v. 221, 229, 230, 232.

prescription, xii. 315.

**SURRENDER IN WAR**, xiii. 149.**SURROGATUM**, xii. 201.

husband and wife, xii. 201.  
 trustees, xii. 201.  
 succession, xii. 201.

involuntary sales, xii. 202.

proprietors with limited rights, xii. 202.

**SURVEYOR**, xii. 203.

apprenticeship, xii. 203.  
 examination, xii. 203.  
 liability, xii. 205.  
 indemnification, xii. 203.  
 negligence, xii. 205.  
 charges, xii. 204.  
 prescription, xii. 315.  
 of highway, xii. 205.  
 of taxes, xii. 205.

**SURVIVANCE IN COMMON CALAMITY.**

**PRESUMPTION OF**, xii. 205.

**SURVIVOR**, vii. 383; xii. 100, 111, 112.**SUSPECTS**, x. 10.

**SUSPENSION**, xii. 206. *See Interdict.*  
 decree pronounced in Court of Session, xii. 208.

decrees of Inferior Courts, xii. 209.  
 of decree *ad factum præstandum*, xiv. 79.  
 of extracted decree, i. 264; xii. 206.  
 and interdict, xii. 211, 281.  
 of charge, ii. 392; xii. 279.  
 of diligence, iv. 236.  
 procedure, xii. 211.  
 caveat, ii. 354.  
 sist, xii. 212.  
 caution and consignation, ii. 349; xii. 212.  
 juratory caution, xii. 213.  
 passing or refusing the note, xii. 214.  
 review, xii. 214.  
 appeal to House of Lords, xii. 215.  
 second notes, xii. 215.  
 third notes, xii. 216.

SUSPENSION—*continued.*

turning charge into a libel, xii. 216.  
reference to oath, xii. 216.  
procedure after note passed, xii. 217.  
jurisdiction in, xii. 218.

## SUSPENSION (CRIMINAL)—

and liberation, xii. 218, 219.  
reasons, xii. 221.  
procedure, xii. 221.

## SUSPENSION OF ADVOCATE, i. 149.

## SWANS, xii. 222.

SWEEPS. *See* Chimney Sweepers.

## SWINE FEVER, iii. 245.

## SYMBOLICAL DELIVERY, xiii. 38.

## SYNOD, iii. 16.

TACITURNITY. *See* Mora.TAILZIE. *See* Entail.TAXATION, xii. 222; i. 354. *See* Auditor;

## Expenses.

modes of, xii. 223.  
remit to auditor, xii. 224.  
expenses of, i. 354, 355.  
in Sheriff Court, xii. 225.

TAXES. *See* Income Tax; Rating; Land Tax.

ambassador not liable for, i. 213.  
Crown takes precedence, x. 47.  
imprisonment for, xii. 218.  
Management Act. *See* Income Tax.  
pointing of the ground for, ix. 301.  
surveyor of, xii. 205.

## TAY—

illegal salmon fishing in, xiv. 35.

## TEA—

adulteration of, xi. 62, 63.

TEACHER, xii. 226. *See* Schoolmaster.

school board, iv. 375.

TECHNICAL SCHOOLS. *See* Education.

## TEIND CLERK, iii. 60.

TEIND COURT, xii. 227. *See* Augmentation; Stipend.

calling list, ii. 279.

common agent, iii. 124.

decrees of valuation, x. 79.

extracts in, v. 196.

extractor, v. 199.

reclaiming note, x. 224.

appeal to House of Lords, xii. 228.

TEINDS, xii. 228. *See* Augmentation;

Chalder; Stipend.

annuity of, i. 236.

TEINDS—*continued.*

bishops, ii. 140.

conquest, iii. 211.

*cum decinis inclusis*, iv. 26.

*decime debentur parocho*, iv. 116.

*decime garbales* and *rectoria*, iv. 116, 117.

*decime vicariae*, iv. 117.

dereliction of valuation of, iv. 206.

drawn teind, iv. 357; xii. 228.

effect of erection of royal burgh, ii. 251.

income tax, vi. 270.

inhibition of, vi. 358.

Lochmaben rentallers liable for, xii. 238.

Lords Commissioners for, xii. 227.

prescription, ix. 403.

require express alienation, ix. 183.

sale by tutors, xiii. 15.

unfeudalised terec excluded, xii. 49.

valuation of, xii. 233.

## TELEGRAPH; TELEPHONE, ix. 367.

## TEMPERATURE—

factories and workshops, v. 213.

## TEMPORARY—

streams, xiii. 172-174.

TENANT, xii. 233. *See* Landlord and Tenant; Lease.

rating, x. 183, 186.

defenders, xii. 234.

procedure in removings, xii. 234.

Act of Sederunt, 14th Dec. 1756, xii. 235.

Sheriff Courts Act, 1853, xii. 235.

Agricultural Holdings Act, xii. 236.

removing from urban tenements, xii. 236.

removing from small holdings, xii. 237.

removing where defender no legal title, xii. 237.

kindly, xii. 238.

TENDER, xii. 239, 240. *See* Sealed Tender.

Lands Clauses Consolidation Act, 1845, xii. 240.

effect upon expenses, v. 158.

in action for slander, i. 243.

of payments, ix. 236.

sale of goods, xi. 28.

## TENEMENT—

ruinous, vii. 88.

support by, ix. 94; xii. 200, 201.

support to, ix. 94; xii. 195-200.

common interests in, iii. 132.

## TENENDAS, v. 306.

TENOR. *See* Proving of Tenor.

- TENTS, x. 101.
- TENURE OF OFFICE, ix. 92.
- TENURES, ii. 194. *See* Superiority; Booking.  
burgage, ii. 227; xii. 160.  
crofters' holdings, iii. 393, 394.  
feudal, v. 320; xii. 158.  
udal, xiii. 28.
- TERCE, xii. 241; viii. 272; xiv. 80.  
affecting heritable creditors, vi. 191.  
completion of right, xii. 49, 50, 243.  
effect, x. 52.  
brieve of, ii. 223.  
kenning to, vii. 273; xii. 49, 50; xiii. 68.  
does not appear on record, xi. 123.  
effect of divorce, iv. 312.  
effect of state of husband's title, vi. 327; xii. 49, 241.  
estate from which due, ii. 51; xii. 49, 242.  
how excluded, xii. 49.  
lesser, xii. 50, 244.  
right to collect rents, xiii. 69.  
right to remove tenants, xii. 234.  
security against waste, xii. 244.  
transmission of right, xiii. 69.  
who are entitled to, xii. 241.
- TERM—  
*circumduction of the*, iii. 22.
- TERM OF ENTRY—  
disposition, iv. 279.  
feu-charter, v. 305.  
leases, vii. 341.
- TERMINATION—  
of agency, x. 24.  
of broker's appointment, ii. 227.  
of friendly societies, vi. 84.  
of lease, vii. 339.  
of liferent, viii. 116.  
of mandate, viii. 197, 201.
- TERMINATION OF OFFICE—  
curators, iv. 38.  
curator-at-law, xiii. 27.  
factor and commissioner, v. 211.  
female tutors, xiii. 21.  
judicial factor, vii. 206.  
trustees, xii. 394-396.  
tutors nominate, xiii. 21.  
tutor-at-law, xiii. 26.  
tutors dative, xiii. 24.
- TERMLY PAYMENTS. *See* Payments.
- TERMS, REMOVAL, xii. 244.
- TERRITORIAL WATERS, xi. 98, 99.
- TESTAMENT. *See* Will.
- TESTAMENTARY CURATORS. *See* Curators.
- TESTAMENTARY TRUSTEES. *See* Trustees.
- TESTATOR. *See* Trust; Trustee; Will.
- TESTING CLAUSE, iv. 137.
- THEFT, i. 221; xii. 245. *See* *Amotio*.  
aggravations, xii. 247.  
art and part, xii. 247.  
attempt to steal, xii. 247.  
*corpus delicti*, iii. 319.  
evidence of, xii. 247.  
interchangeability of crimes of dishonesty, xii. 247.  
of child, ix. 272.  
of wild animals, i. 225.  
opening lockfast places, viii. 139.  
post office offences, ix. 370.  
punishment, xii. 248.
- THELISSON ACT, xii. 248, 329, 331, 337.
- THIEF. *See* Theft.  
by habit and repute, vi. 155.
- THIRD NOTES OF SUSPENSION, xii. 216.
- THIRD PARTIES—  
actions against and by, vii. 34.  
compensation, xiii. 222, 223.  
contracts in favour, vii. 251.  
curators nominated by, iv. 30.  
examinations in sequestrations, xi. 197.  
extorted bill, v. 188.  
gratuitous alienations, vii. 19.  
hypothec over furniture, vi. 245.  
indemnity by, xiii. 223.  
interest in assignation, iv. 239.  
*jus tertii*, vii. 259.  
landlord's hypothec, vi. 245.  
liability for acts of, iv. 23.  
liability of law agent, vii. 321.  
partnership, ix. 157.  
partnership, dissolution, ix. 171.  
principal and agent, x. 14-19.  
private Act of Parliament, x. 32.  
real burdens, ii. 243.  
recovery of documents, xi. 384.  
reduction by minor, viii. 363.  
reparation against, x. 285.  
representation, x. 308.  
revocation of rights in favour of, vii. 256.  
specific performance, xi. 375.  
stolen property, xiii. 128.

THIRD PARTIES—*continued.*

subrogation, xii. 34.  
 trustees nominated by, iv. 30.  
 Workmen's Compensation Act, xiii. 223.

THIRLAGE, xii. 249. *See* Astraction.  
 nature of right and history, ii. 34; xii. 249.  
 constitution and proof, xii. 250.  
 constitution, xii. 250.  
 proof and constitution, xii. 250.  
 what is not proof of abstraction, xii. 251.

how extinguished, xii. 252.

extent and nature, xii. 252.

liabilities, xii. 253.  
 multures, iv. 362; vii. 23; viii. 138, 335; ix. 100; xii. 253; xiv. 80.  
 sequels, ii. 22; vii. 278; xii. 255.  
 services, xii. 256.

remedies available to dominant tenement, xii. 256.

remedies available to servient tenement, xii. 257.

commutation, xii. 257.

THOLED AN ASSIZE, xii. 258.  
 validity of plea, xii. 258.

THREATS, xii. 258.  
 aggravations, xii. 259.  
 blackmailing, xii. 258.  
 extortion, v. 187; xii. 258.  
 verbal and written, xii. 258.

THREE MILE LIMIT, ix. 39.

THROUGH FREIGHT. *See* Freight.

THROWING ACIDS, i. 328.

THROWING DIRT, i. 327.

TICKET—  
 railway, x. 156.  
 return; computation of time, xii. 263.  
 tramway, xiii. 288.

TICKET OF LEAVE. *See* Convict.

TIGNI IMMITTENDI, xii. 259.

TIMBER, xii. 259.  
 fief and liferenter, xii. 259.  
 heir of entail in possession, xii. 260.  
 landlord and tenant, xii. 260.  
 liferenters' rights, viii. 113.

TIME, COMPUTATION OF, xii. 261. *See*  
 Day; Prescription; Close Time.  
 civil, xii. 262.  
 does time run continuously, xii. 263.  
 when does time begin to run, xii. 262.  
 when does time stop, xii. 263.  
 natural, xii. 261.

TINSEL OF SUPERIORITY, xii. 265. *See*  
 Irritancies.

TINSEL OF THE FEU, xii. 266.

TIPPLING ACTS, vi. 365.

TITLE. *See* Acretion; Bill of Lading; Feu-Charter; Bounding Charter; Disposition; Exambion; Heir; Executor; Warrandice; Sale.  
 assignation of personal, iv. 289–296.  
 bad, x. 67.  
 bounding, v. 290; ix. 186.  
 competing, x. 27.  
 completion of. *See* Service; Notarial Instrument.  
 accretion, i. 46.  
 burgage subjects, ii. 254, 255.  
 general disponee, v. 309; ix. 27.  
 heritable securities, ii. 182; iv. 238.  
 heir, xii. 333.  
 judicial factors, vii. 178, 179, 190, 214.  
 lapsed trusts, xii. 396.  
 long leases, vii. 354.  
 minor, iv. 34.  
 property vest in deceased trustee, ii. 50.  
 real money burdens, ii. 243, 244, 245, 246.  
 trustees, i. 283; xii. 352, 353.  
 trustees assumed, i. 343.  
 trustee, *cessio bonorum*, ii. 364.  
 trustees *ex officio*, ii. 395.  
 trustee in bankruptcy, i. 53; xi. 195, 200–208.  
 tutors, x. 119; xiii. 12, 19.  
 by notarial instrument, ix. 24–32.  
 by service, xi. 53.

deeds—  
 depositing in security, ii. 149; xi. 143.  
 heritable creditor's right to, ii. 176.  
 liferenters' rights to, viii. 114.  
 defective, i. 47; xi. 204.  
 document of, iv. 314; xii. 29, 30.  
 double, iv. 352; xii. 65.  
 effect of consolidation, iii. 225.  
 necessary for possessory judgment, ix. 363.  
 of honour, iv. 226.  
 heir-apparent, xii. 51.  
 heirs-portioners, xii. 48.  
 succession to, xii. 41.  
 of pledgee, ix. 282.  
 passive, ix. 187–199; xii. 57, 58.

**TITLE—continued.**

plan annexed to, ii. 206.  
 prescriptive, ix. 396 ; x. 67.  
 to challenge preferences, ii. 20.  
 to exclude ; exclusive title, xii. 266.  
 to ferry, v. 260.  
 to principality lands, xii. 52.  
 to remove tenants, xii. 234, 237.  
 to terce, xii. 50.  
 to the Crown, iv. 5 ; xii. 52.  
 vicious intromission, xiii. 125.  
 warranty of, xi. 18, 19.

**TITLE TO SUE AND DEFEND, xii. 267.**

*See Interest; Jus tertii.*

title to sue, xii. 267.  
 alien enemy, xiii. 151.  
 assignees, xii. 278.  
 bankrupt, xi. 252.  
 beneficiaries, xii. 272, 363.  
 body of commissioners, xiv. 8.  
 companies, vii. 151 ; xii. 271, 277.  
 county council, iii. 361.  
 creditors in sequestration, i. 4 ; xi. 255.  
 clubs, iii. 65.  
*curator bonis*, vii. 204.  
 district board, vi. 19.  
 executors and representatives, v. 147 ;  
     xii. 42, 132, 272.  
 fatuous or insane persons, vii. 4 ; xii.  
     269.  
 firm, vi. 2.  
 foreigners, vi. 34.  
 friendly societies, vi. 86.  
 incorporation, vi. 312.  
 interest to maintain action, ii. 236.  
 law agent, vii. 313.  
 Lord Advocate, ix. 94.  
 married women, vii. 218 ; viii. 299 ;  
     xi. 269, 270.  
 members of the public, xii. 272.  
 minors, iv. 42 ; vii. 182 ; xii. 270.  
 parish council, ix. 327, 330.  
 partners, ix. 156 ; xii. 278.  
 post office, ix. 367.  
 principal and agent, x. 21.  
 printers, x. 27.  
 pupil, vii. 182 ; x. 119 ; xii. 269.  
 railway companies, x. 173.  
 relatives, xi. 367 ; xii. 42, 132, 272.  
 residuary legatee, vii. 368.  
 trade union, xii. 295.  
 trustee in bankruptcy, xi. 210 ; xii. 270.

**TITLE TO SUE AND DEFEND—contd.**

title to sue—*continued.*  
 trustees, savings banks, xi. 89.  
 tutor, xiii. 16.  
 consistorial actions, iv. 307 ; xii. 276,  
     277.  
 joint action, vii. 95.  
 land rights, xii. 279.  
 maills and duties, viii. 181.  
 objections arising from cause of action,  
     xii. 273.  
 poinding of the ground, ix. 299.  
 removal of nuisance, ix. 44.  
 proving of the tenor, x. 79.  
 removing, xii. 233.  
 reparation, x. 285 ; xii. 274.  
 statutory penalties, ix. 249.  
 title to defend, xii. 280.  
 adjoining proprietors, xii. 281.  
 debtors, xii. 281.  
 heritable creditors, xii. 281.  
 husbands, xii. 280, 281.  
 magistrates, xii. 281.  
 minors, viii. 357.  
 pupils, xii. 280.  
 married women, xii. 280, 281.

**TOBACCO, xiv. 75.****TOCHER—**

husband's liability for debts, i. 242.

**TOLLS—**

canal, ii. 280.  
 railway, x. 144, 145, 160.  
 rating, x. 181.  
 tramway, xiii. 281, 285, 288, 289.

**TOMBSTONES—**

erection of, ii. 268, 271, 272.

**TORTURING, i. 297.****TOWAGE. *See Tug and Tow.*****TOWING PATH, xiv. 77.**

rights to use, ii. 283.

**TOWN AND COUNTY BANK LIMITED,**  
*i. 380.*

notes in circulation, i. 390.

**TOWN CLERK—**

burghs of regality and barony, xii. 285.  
 of Paisley, ii. 194.  
 parliamentary burghs, xii. 285.  
 royal burghs, xii. 281.  
     appointment, xii. 282 ; xiv. 80.  
     disqualifications, xii. 282.  
     duties, xii. 284 ; xiv. 80.  
     appointment of, xii. 281.

TOWN CLERK—*continued*

royal burghs—*continued*.  
duties at election, viii. 387.  
interim, xii. 283.  
qualifications, xii. 281.  
register of burgesses, ii. 257.  
removal from office, xii. 284.  
remuneration, xii. 284.  
tenure, xii. 282, 283.

TOWN COUNCIL. *See* Councillor; Burgh,

Royal; Town Clerk; Magistrate.  
jurisdiction of Sheriff over, xi. 320.  
elections, viii. 385.  
vacancies in, viii. 389.  
(Scotland) Acts, 1900, 1983, xiv. 81.

## TRADE—

Board of, xii. 285.  
buildings, x. 185.  
custom of, iv. 57; xi. 28, 55.  
discount, xi. 28.  
fixtures, xi. 146.  
disputes, Conciliation Act, xii. 289.  
trade mark, viii. 325.  
definition, xii. 290.  
interdict for infringement, vii. 25.  
measure of damages, iv. 83.  
moveable, xii. 42.  
period of protection, xii. 291.  
registration, xii. 290.  
transfer, i. 338; vi. 129, 131; xii. 291.

## name—

bills of exchange, ii. 89.  
moveable, xii. 42.  
transfer of, vi. 128.  
restraints in, x. 328.  
offensive trades, x. 95.  
profits, x. 181.

TRADE UNIONS, xii. 291; xiv. 81. *See*  
Conspiracy; Friendly Societies; Trade  
Disputes.  
constitution and status, xii. 292.  
effect of Act 1871, xii. 292.  
jurisdiction of Courts of law, xii. 293.  
relations with friendly societies, xii. 294.  
registered, xii. 294.  
exemptions from income tax, xii. 296.  
liability of trustees, xii. 295.  
members, xii. 295.  
prosecutions and complaints, xii. 295.  
register, xii. 294.  
rules, xii. 294.  
title to sue, xii. 295.
TRADE UNIONS—*continued*.

registered—*continued*.  
vesting and transfer of property, xii.  
294.  
combining against third parties, xii.  
296.  
civil liability, xii. 296.  
criminal liability, xii. 297.

TRADE USAGE. *See* Custom of Trade.

## TRADER—

ambassador as, i. 213.

TRADITION. *See* Delivery of Moveables.TRAFFIC. *See* Railway.

regulation of, x. 370; xiii. 285.  
roads and bridges, x. 372.

## TRAMWAY—

by-laws, xiii. 287, 288.  
construction of, xiii. 282.  
discontinuance of, xiii. 286.  
fares, xiii. 285.  
fencing and lighting, xiii. 283.  
insolvency of promoters, xiii. 287.  
licensee to use, xiii. 286.  
opening road, xiii. 283, 284.  
overcrowding, xiii. 288.  
penalties, xiii. 283, 286.  
provisional orders, xiii. 280-289.  
public title to sue, xii. 273.  
purchase of, xiii. 287.  
tickets, xiii. 288.  
tolls, xiii. 281, 285, 288, 289.  
working of, xiii. 284.

## TRANSACTION, xii. 298.

TRANSFER. *See* Sale; Assignation;  
Stoppage *in transitu*; Delivery Order;  
Document of Title; Blank Transfer.  
of registered ship, xiii. 241.  
of share certificate with blank, ix. 15.  
of shares in companies, vii. 124.  
Stamp Acts, xi. 434, 452.

## TRANSFERENCE (PROCESS), xii. 299.

*See* Appeal; Process.

appeals for removal, xii. 299.  
ordinary appeals for review, xii. 299.  
motion for, i. 218.  
*ob contingentiam*, iii. 258.  
Sheriff Court, xi. 315.

## TRANSMISSION—

of claim for reparation, x. 286.  
of leases, vii. 338.  
of trust funds by executor of sole trustee,  
xiv. 30.

- TRANSPORTATION—**  
 of convicts, i. 297 ; ix. 245.  
 of kirks, vii. 276.
- TRANSUMPT, ACTION OF**, xii. 301.
- TRAVELLERS—**  
*bond fide*, ii. 164 ; viii. 62, 63.  
*malā fide*, viii. 69.
- TRAVELLING—**  
 without ticket, x. 157, 158.
- TRAWLING**, xii. 301 ; vi. 4 ; xiv. 34.
- TREASON**, xii. 305. *See Attainder* ;  
 Forfeiture.
- bail, i. 373, 374.
- person amenable to trial, xii. 307.
- words spoken, xii. 306.
- writings, xii. 306.
- procedure, xii. 307.
- punishment, xii. 307.
- TREASON-FELONY**, xii. 307.
- TREASON, MISPRISION OF**, xii. 308.
- TREASURE-TROVE**, xii. 309.
- TREASURER—**  
 savings banks, xi. 89.
- TREATING—**  
 at elections, iii. 325.
- TREES. *See Timber***.
- avulsio*, i. 368.
- TRESPASS**, xii. 311. *See Poaching*.  
 after deer, iv. 144.
- TRESPASSER—**  
 assault on, i. 330.  
 on railway, x. 153.  
 reparation for injuries, x. 283.
- TRIAL. *See Jury Trial* ; Criminal Prosecution.**  
 plea in bar of, ii. 31.  
 new, ix. 16 ; x. 314.
- TRIENNIAL PRESCRIPTION**, xii. 312 ;  
 xiv. 81. *See Prescription*.  
 debts to which Statute applicable, xii. 314.  
 meaning and effect of Statute, xii. 312.  
*terminus a quo*, xii. 316.  
 writ or oath of party, xii. 317.
- TROOPS—**  
 billeting of, ii. 137.
- TROUT FISHING**, vi. 22 ; xiv. 35. *See Fishings*.  
 parts and pertinents, ix. 183.
- TROUT POACHING**, vi. 23.
- TRUCE**, i. 306 ; xiii. 150.
- TRUCK ACTS, THE**, xii. 320. *See Master and Servant* ; Wages.
- TRUST**, xii. 326. *See Absolute Disposition* ; Trust Deed ; Will ; Marriage ; Contract ; Trustee.
- breach of, ii. 214 ; xii. 352.  
 profit and loss, xii. 380.
- capital and income, ii. 289, 290.
- charitable, ii. 393.
- constitution, xii. 331.
- constructive, xii. 338.
- continuing, xiii. 109, 111.
- declarator of, xii. 145.
- defined, xii. 326 ; xiii. 9.
- domicile and jurisdiction, xii. 342-346.
- English, xii. 367.  
*nobile officium*, xii. 371.
- Trust Acts inapplicable, xii. 346.
- foreign, xii. 342, 345.
- implied, xii. 339.
- lapsed, iii. 197 ; xii. 396.
- lawful and unlawful, xii. 328-331.
- nobile officium*, ix. 21.
- precatory, vii. 373 ; xii. 118.
- proof of, i. 18 ; xii. 334.
- public and private, ix. 116 ; xi. 10 ;  
 xii. 327.
- repugnancy, xii. 396.
- resulting, xii. 125, 126, 336-338.
- revocation—  
 method of, xii. 341, 342.  
 power to revoke, xii. 340 ; xiv. 81.
- secret, iii. 205.
- simple and special, xii. 71, 327.
- termination of, xii. 43, 125, 394.
- TRUST DEED FOR CREDITORS**, xii. 397.  
 accession to, i. 28 ; xii. 340, 399.  
 blank, ii. 144.
- debtor's discharge, iv. 245 ; xii. 401.
- in partnership, ix. 180.
- reduction of, xii. 397, 398.
- revocation, xii. 340.
- TRUST DEED FOR DEBENTURE HOLDERS**, iv. 104, 105.
- TRUSTEE**, xii. 346. *See Trust*, Breach of ; Charitable Trust ; Savings Bank.  
 appointment, ii. 394 ; xii. 349, 351.  
 acceptance and declinature as, xii. 350.  
 by Court, i. 283.  
 quorum, i. 315 ; xii. 352.  
*sine quo non*, xii. 351.
- arrestments in hands of, i. 313, 315, 316,  
 317.
- as executors nominate, v. 141.

TRUSTEE—*continued.*

- as tutors and curators, xii. 352.
- assumed, i. 341, 342; xi. 420; xii. 350.  
making up title, xii. 353.
- as tutors, xiii. 6.
- bankruptcy of, xi. 213, 251.
- bidding at auction, x. 117.
- bonds by and to, ii. 171.
- bribery, xii. 354.
- can transact with beneficiary, ii. 50.
- cannot charge for services, xii. 353.
- cannot contract with themselves, xii. 354.
- cannot make profit, i. 353; xi. 8; xii.  
354; xiii. 338, 354, 361, 379.
- capacity to act—
  - as corporations, etc., xii. 349.
  - as married women, xii. 349.
  - as minors, xii. 348.
- claims against trustee, xii. 357.
- completion of title, ix. 27.
- consulting beneficiary, ii. 50.
- delectus personæ*, iv. 169.
- delegating powers, xi. 8.
- direction to, vii. 374.
- direction to entail, xii. 68.
- directions to sell, xii. 43, 44.
- discharges by, iv. 238.
- duties—
  - accounting, xii. 345.
  - administration of estate, xii. 357.
  - alimentary annuities, xii. 358.
  - annuities, xii. 358.
  - defeasible directions, xii. 359.
  - directions which cannot be fulfilled,  
xii. 359.
  - distribution of estate, xii. 43, 125, 357.
  - payment of expenses, xii. 355.
  - payment of legacies, xii. 119–121,  
358.
  - trustee's debts, xii. 119–121, 127–129,  
356.
  - effect of conversion on succession, xii.  
42–44.
  - entry with superior, xii. 173, 177.
  - ex officio*, x. 317, 319; xii. 350.  
declinature of office, xii. 350.
  - successors, xii. 351.
  - exoneration and discharge, v. 153–155;  
x. 321; xii. 355, 361, 362, 394,  
395.
  - multiple poinding, iii. 157; viii. 383.
  - representatives, xii. 361, 362.

TRUSTEE—*continued.*

- intimation of assignations, i. 335.
- investments, xii. 371; xiv. 82.
- supervision by accountant of Court,  
i. 41; xii. 381.
- bank stock, xii. 378.
- beneficiaries' approval, xii. 380, 381.
- building loan, xii. 375, 376.
- entailed money, xii. 380.
- expenses of, xii. 382.
- for particular legacies, xii. 380.
- improper, xii. 121.
- loan to trustee, xii. 379.
- Local Authorities' Loans Act, xii. 372.
- personal security, xii. 375.
- power under deed, xii. 374.
- sale of consols, xii. 374.
- sanctioned by Court, xii. 373.
- trade or trading companies, xii. 377.
- under 1884 Act, xii. 371, 372.
- valuation, xii. 376, 377.
- jurisdiction, vii. 227; xi. 317.
- liability—
  - as shareholders, ii. 29; vii. 162, 163;  
xii. 387–389.
  - clause of immunity, xii. 383.
  - for accidents, xii. 385.
  - for co-trustees, xii. 352, 383, 384.
  - for expenses, vii. 390; xii. 389–394.
  - for factor and agent, xii. 262, 263,  
384, 385.
  - for income tax, vi. 266.
  - for outstanding debts, ii. 163.
  - singuli in solidum*, xii. 389.
  - to beneficiaries, xii. 382.
  - to third parties, xii. 385, 387.
  - trade unions, xii. 295.
  - legacy to, x. 319; xii. 122.
  - lending to agent, i. 353.
  - lien, viii. 84.
  - making up title, xii. 352.
  - oath in bankruptcy, ix. 59.
  - oath on reference, ix. 69.
  - of property gifted to pupil, xiii. 2.
  - powers—
    - affecting vesting, xiii. 87–91.
    - discharge resigning trustees, xii. 362.
    - compromise and reference, i. 299;  
iii. 163; xii. 363.
    - granting leases, vii. 331; xii. 362; xiv.  
82.
    - of appointment by, i. 282.

TRUSTEE—*continued.*

powers—*continued.*

- opinion of counsel, xii. 361.
- payment without constitution, xii. 364.
- to appoint accountants, xii. 361.
- to appoint law agent and factor, i. 353; vii. 317; xii. 353, 361; xiv. 82.
- to sell heritage, xii. 43; xiv. 82.
- under trust deed, xii. 360.
- private agent, xii. 361, 362.
- removal, ix. 22; vii. 208; xiv. 82.
- expenses, xii. 391.
- remuneration, i. 283; xii. 361, 362.
- resignation, x. 317; xii. 186, 361, 362; xiv. 82.
- restitution by, x. 326.
- searches against, xi. 120.
- settlement policies, viii. 104.
- sisting in action, xii. 280.
- special powers, xii. 364.
- advances from accumulated income, xii. 369; xiv. 82.
- advances from capital, ii. 50; xii. 368.
- allowance from income, xii. 370.
- borrowing, ii. 171; vi. 187; ix. 22; xii. 367.
- excambion, xii. 368; xiv. 82.
- feuing and long leases, vii. 350; xii. 364, 367.
- repayment of heritable debts, xii. 370.
- sale, xi. 7–9; xii. 364, 365, 366, 367.
- procedure for, xii. 370.
- surrogatum, xii. 201.
- transmission of trust funds by executors of sole, xiv. 30.
- public and statutory—
  - parliamentary expenses, xii. 393, 394.
- termination of trust, x. 321; xii. 355, 394–397.
- anticipation of period of payment, xiii. 101, 103.
- within meaning of Trust Acts, xii. 347.
- warrantice, xiii. 156.
- for creditors—
  - administration, xii. 400.
  - challenging preferences, ii. 21.
  - employing law agent, xii. 361.
  - trust deed, xii. 397–401.
  - liability of, xii. 400.
  - lien, xii. 401.
  - remuneration of, xii. 400, 401.

TRUSTEE IN BANKRUPTCY. *See*

Sequestration; Act and Warrant; Bankruptcy; *Cessio*; Accountant of Court.

- auditing of accounts, i. 39.
- buying assets, xi. 9.
- duty to report—
  - fraudulent bankruptcy, vi. 69.
- interest opposed to creditors, vii. 35.
- powers and liabilities, i. 3, 4; xi. 246.
- power to compromise, iii. 163.
- privilege, iii. 45.
- liability for expenses, xii. 392.
- removal and resignation, xi. 9, 249.
- remuneration, xi. 249.
- discharge by, iv. 238.
- discharge of, xi. 250, 251.
- sale of heritage, xi. 218, 219.
- searches against, xi. 121.
- sisting as defender, i. 218; x. 287.
- title to sue, i. 3; x. 78; xii. 270.

## TUG AND TOW, xii. 401.

- towage, xi. 332.
- collision, iii. 98; xii. 403.

TURNPIKE ACTS. *See* Roads and Bridges; Highways.TUTOR, vi. 154; xiii. 1. *See* Curator; Administrator-in-Law; Guardian; Judicial Factor; Minor; Pupil; Entail.

- who may nominate, xiii. 6.
- parties eligible, xiii. 4, 5.
  - trustees, xii. 352; xiii. 6.
  - how appointed, xiii. 6, 7.
  - acceptance of office, xiii. 7.
  - declinature of office, xiii. 7, 8.
  - acting as factor or agent, xiii. 7, 14.
  - altering succession, xii. 201; xiii. 15.
  - annuities, xiii. 20.
  - arrestments, i. 315; xiii. 16.
  - auctor in rem suam*, i. 352; xiii. 17.
  - cannot delegate, xiii. 6.
  - cash in hand, xiii. 13.
  - caution, vii. 195, 196; xiii. 7, 11, 2.
  - completion of title, xiii. 12, 19.
  - entails, v. 53; xiii. 14, 20.
  - intervention by Court, xiii. .
  - intimations, xiii. 16.
  - liability, iii. 287; xii. 390; xiii. 8, 9, 11, 12, 13, 14, 16, 17, 18, 22, 23.
  - oath on reference, xiii. 16.
  - consent of pupil, xiii. 11.

**TUTOR—*continued.***

powers and duties—  
 aliment, xiii. 10, 21,  
 custody, xiii. 9.  
 education, xiii. 10.  
 abatement of rent, xiii. 9, 13.  
 accounting, xiii. 18.  
 compromise, iii. 163; xiii. 13.  
 management, xiii. 10, 12, 13–16.  
 payment of debts, xiii. 14.  
 realisation and investment, xiii. 12,  
     13.  
 recovery of estate, xiii. 11.  
 recovery of titles, etc., xiii. 12.  
 renunciation of lease, xiii. 9, 13, 20.  
 privileges, xiii. 7.  
 special powers, iii. 84; xiii. 9.  
 aliment pupils dependent, xiii. 21.  
 borrow, xiii. 15, 19, 20.  
 carry on trade, xiii. 21.  
 collate and elect, xiii. 21.  
 examb, xiii. 19, 20.  
 feu, xiii. 20.  
 lease, xiii. 13, 19, 20.  
 mansion-house repairs, etc., xiii. 14,  
     20.  
 payment out of capital, xiii. 21.  
 sale, xiii. 8, 14, 15, 19, 20.  
 under the Pupils Act, xiii. 19.  
 procedure, xiii. 19.  
 effect of authority, xiii. 21.  
 statutory powers, xiii. 20.  
 speculation by, xiii. 15.  
 title to sue, xiii. 16.  
 tutorial inventories, vii. 52; xiii. 8, 9,  
     11.  
 vicious intromission, xiii. 12, 17.  
 termination of office, xiii. 21.  
     exoneration and discharge, v. 155.  
     removal, xiii. 21, 22.  
 resignation of, xiii. 9, 21.  
*ad litem*, xiii. 23.  
 at-law, xiii. 24.  
     to pupil, xiii. 9, 24.  
     appointment, xiii. 25.  
     to whom appointed, xiii. 25.  
     who may be appointed, xiii. 5, 6, 7, 21,  
         25.  
     how appointed, xiii. 25.  
     caution, xiii. 25.  
     review, xiii. 25.  
 powers, xiii. 10, 25.

**TUTOR—*continued.***

liability, xiii. 17, 25.  
 inventories and accounting, xiii. 26.  
 to insane person, xiii. 26.  
     appointment, xiii. 26.  
     mode of appointment, xiii. 26.  
     review, xiii. 27.  
     powers and duties, xiii. 27.  
     termination of office, xiii. 27.  
 dative, xiii. 9, 23.  
     caution, xiii. 23, 27.  
     liability, xiii. 17.  
     to pupil, xiii. 23, 25.  
     appointment, xiii. 4, 7, 21, 23.  
     powers and duties, xiii. 23.  
     to insane person, xiii. 24.  
     nature of office and powers, xiii.  
     24.  
     termination, xiii. 24.  
     tutor's death, xiii. 21.  
     tutorial inventory, xiii. 26.  
     year and day, xiii. 23.  
 pro-tutor, xiii. 23.

**TUTORY—**  
 brieve of, ii. 221.

**TWEED RIVER—**  
 salmon fishings, vi. 19.

**TWOPENNY ACT**, vii. 269.

**UDAL LAND**, i. 208.  
 conquest, iii. 211.  
 superiority, xii. 153.  
 vesting, xii. 52.

**UDAL LAW**, xiii. 28; xiv. 8.

**ULTIMUS HÆRES**, ii. 166; vii. 60, 302;  
 xi. 373; xii. 45, 48. *See* Last Heir.

**UMPIRE**. *See* Arbiter; Arbitration; Oversman.

**UNCLAIMED ARTICLES—**  
 treasure-trove, xii. 309–311.

**UNCLAIMED DIVIDEND—**  
 in sequestration, xi. 227.

**UNDATED—**  
 bill of exchange, xii. 142.

**UNDEFENDED ACTION**. *See* Decree in Absence.

**UNDERGROUND DWELLINGS**, x. 102.  
 water, xii. 190; xiii. 167, 171.

**UNDERWRITER**. *See* Marine Insurance; Fire Insurance.  
 abandonment (marine insurance), i. 4.  
 compensation, xiii. 222, 223.

**UNDERWRITER—*continued.***

barratry, ii. 35.  
marine—  
    average, i. 362-367.  
title to sue, xii. 274, 275.

**UNDUE INFLUENCE.** *See* Circumvention.

at elections, iii. 329.

**UNDUE PREFERENCES AND PRE-JUDICES—**

railway, x. 161; xiv. 72.

**UNILATERAL OBLIGATION**, ix. 78.**UNION BANK OF SCOTLAND LTD.**, i. 380.

notes in circulation, i. 390.

**UNION, CLAUSE OF**, xiii. 38.

union of lands, xiii. 238.

**UNIVERSAL LEGACY**, vii. 368; xii. 108.**UNIVERSITIES**, xiii. 41.

chancellor, xiii. 42.  
extra mural lectures, xiii. 44.  
general council, xiii. 27, 43.  
graduation, xiii. 43.  
income tax, vi. 276, 277.  
lecturers and assistants, xiii. 43.  
poor rates, ix. 335.  
principals, xiii. 42.  
rector, xiii. 42.  
vice-chancellor and principal, xiii. 42.  
*senatus academicus*, xiii. 43.  
students, xiii. 44.  
women, xiii. 44.  
court, xiii. 42.  
copyright, iii. 300.  
elections—

    procedure at, xiii. 44.  
    date of election, xiii. 45.  
    register of voters, xiii. 45.  
    registration of voters, x. 274.  
    registration appeals, xiii. 45.  
    representative, xiii. 45.  
    polling, xiii. 45, 46.  
    counting votes, xiii. 46.  
    casting vote, xiii. 46.  
    returning officer, xiii. 45, 46.  
    declaration of poll, xiii. 46.  
    intimation of election, xiii. 45.  
    objections to votings, xiii. 46.

**UNLAWFUL DETENTION**, iii. 378.**UNLIMITED COMPANIES.** *See* Company.**UNOCCUPIED PROPERTY—**

poor rates, x. 190.

**UNPUBLISHED WORKS**, iii. 291.**UNSOUND FOOD**, x. 97.**UPSET PRICE.** *See* Price.**USAGE**, iii. 134; xiii. 46. *See* Custom; Consuetudinary Law.

contract, xiii. 50, 51.

knowledge of, xiii. 50.

local customs, xiii. 47.

proof as to, xiii. 47-51.

statutory enactments, xiii. 49.

usual law, xiii. 47.

**USAGE OF TRADE.** *See* Custom of Trade.**USUCAPIO; PRESCRIPTION IN ROMAN LAW**, xiii. 52.**USUFRUCT**, xiii. 53.**USURY; USURY LAWS**, xiii. 54.**UTERINE**, vi. 158; xiii. 55, 213.**UTTERING**, vi. 39. *See* Coining; Forgery.**VACANCIES—**

county council, iii. 368.

parish council, ix. 124.

Parliament, ix. 129.

School Board, xi. 93.

town council, ii. 263; viii. 389.

**VACATION—**

Court of Session, xi. 292.

appeal, i. 261.

arrestments, i. 311.

box days, ii. 207.

calling summons, ii. 279.

Court, ii. 70.

decree in absence, ii. 71.

petitions, ix. 261.

**VACCINATION**, xiii. 55.

authorities for execution of Act, ix. 117; xiii. 55.

appointment of vaccinators, xiii. 56.

certificate of, xiii. 56.

child insusceptible, xiii. 56.

defraying cost of, xiii. 57.

duties of registrar, xiii. 56, 57.

registration, xiii. 56.

penalties, xiii. 56, 57.

**VAGABOND.** *See* Vagrant.**VAGRANT—**

vagrancy laws, x. 11; xiii. 57.

imprisonment of, x. 11.

**VALUATION—**

appraiser, i. 285.

for inventory duty, vii. 53.

Lands Clauses Acts, vii. 282-299.

VALUATION—*continued.*

- of fixtures, vi. 30.
- of heritable securities, xii. 376, 377.
- of railways, x. 169.
- of teinds, xii. 233.
- Stamp Acts, xi. 421.

VALUATION APPEAL COURT. *See* Lands Valuation Appeal Court.VALUATION ROLL. *See* Rating; Assessor.

- advertising stations, i. 140.
- canals, ii. 282.
- railways and canals, i. 331.
- submarine minerals, xi. 100.
- supplementary, xiv. 61.

## VALUE—

- accommodation bill, i. 36.
- bills of exchange, ii. 76.

## VANS—

- Public Health Act, x. 101.

VASSAL, v. 57, 321; xii. 152. *See* Superiority, Superior, and Vassal.

- burgage, ii. 250.
- udal, xii. 30.

## VENTILATION—

- factories and workshops, v. 213.

## VERBAL OBLIGATIONS, ix. 79.

VERDICT (CIVIL). *See* Bill of Exceptions; Jury Trial; New Trial.

- criminal, xiii. 59.

- ambiguity of, xiii. 62.
- amendment of, xiii. 59.
- defective, iii. 279.
- of acquittal, i. 53; xiii. 60.
- of condemnation, xiii. 60.
- recording of, xiii. 59.

VERGENS AD INOPIAM. *See* Insolvency.

- arrestment, i. 314.

## VERITAS—

- defamation, iv. 150.

VERITY, OATH OF. *See* Oath in Bankruptcy; Sequestration.

## VERMIN, xiii. 63.

- cleansing of person, xiii. 63.

VESTING IN SUCCESSION, xiii. 64; xiv. 83. *See* Allenarly; Institute; *Spes successionis*; Succession.

- acceleration of, vii. 408.

- cessio bonorum*, ii. 364.

- definition of, xiii. 63.

- marriage-contract, viii. 290–292; xiv. 84.
- continuing trust, xiii. 109, 111.

VESTING IN SUCCESSION—*continued.*marriage-contract—*continued.*

- creditors of parent, xiii. 114, 118.
- dissolution of marriage, xiii. 111, 112.
- in a class, xiii. 112, 114; xiv. 92–94.
- liable to fluctuation, xiii. 110, 111.
- postponed, xiii. 114.
- rights of children, xiii. 106, 107–109, 119.

- second marriage, xiii. 18.

- rights of children born, xiii. 106, 107.

- rights of spouses, xiii. 106.

## post-nuptial contract, xiii. 118, 119.

## savings bank trustees, xi. 89.

## testamentary dispositions, xiii. 71.

*a morte testatoris*, xiii. 73; xiv. 84.

- conditional direction to pay, xiii. 103, 104; xiv. 84.

- contingency, xiii. 91–94; xiv. 86.

- majority, xiii. 81–83; xiv. 86.

- marriage, xiii. 81–83; xiv. 86.

- powers or directions to trustees, xiii. 87–91; xiv. 87–90.

- survivorship, xiii. 83, 86; xiv. 86.

- date fixed, iv. 222; xiii. 67, 73, 76–81.

- defeasance, iv. 155; vii. 380; xiii. 66, 94, 97; xiv. 91.

- direct gift, xiii. 104, 105.

- direct to grantees, xiii. 72; xiv. 86.

- in a class, xiii. 99; xiv. 92–94.

- legacies, i. 234; vii. 400–408; xii. 116, 123–125; xiii. 74.

- no livery, xiii. 105.

- postponement of payment, xiii. 74, 75, 76; xiv. 84, 85.

- powers not suspending, xiii. 88, 91; xiv. 89.

- power to make advances, xiv. 97.

- rule of interpretation, xiii. 71; xiv. 84.

- subsidiary elements, xiii. 105, 106.

- trust purposes, xiii. 101–103; xiv. 94–97.

- to trustees, xiii. 72.

- two periods, xiii. 105.

- unforeseen events, xiii. 100; xiv. 94.

## titles of honour, xii. 52.

## trade unions, xii. 294, 295.

## trustee in bankruptcy, xi. 200.

## tutor-at-law, xiii. 25.

## udal lands, xii. 52.

- VESTING IN SUCCESSION—*continued.*
- ex lege*—  
courtesy, xiii. 69.  
intestate succession, xiii. 69.  
*jus relictæ*, xiii. 68 ; xiv. 83.  
*jus relict*i**, xiii. 68.  
legitim, xiii. 68 ; xiv. 83..  
teree, xiii. 68.
- VEXATIOUS ACTION, xiii. 119.
- VICE, SUCCEEDING IN THE, xiii.  
119. *See* Ejection and Intrusion ; Possessory Action ; Violent Profits.
- VICENNIAL PRESCRIPTION, xiii.  
120.  
*See* Prescription.
- holograph, xiii. 120.
- retours, xiii. 120.  
crimes, xiii. 120.
- VICTUALLING HOUSE—  
billetting, ii. 137.
- VIEW, PROOF ON, xiii. 121.  
by judge, xiii. 121.  
by jury, xiii. 121.
- VIOLATING SEPULCHRES, xiii. 123.
- VIOLENCE, i. 171. *See* Extortion ; Robbery, etc.
- VIOLENT PROFITS, iv. 385 ; xiii. 123.  
caution, ii. 352 ; xiii. 124.  
executor, xiii. 125.  
heir, xiii. 125.  
measure of damages, iv. 82.  
prescription, xiii. 125.  
succeeding in the vice, xiii. 123.  
warning, xiii. 124.
- VITIATING—  
bills of exchange, xii. 142.  
deeds, xiii. 125.
- VITIATIONS—  
in writs, xiii. 198.
- VITIOUS INTROMISSION, i. 238 ; xii.  
133, 134.  
accounting, xiii. 127.  
creditors, xiii. 127.  
decree against intromitters, xiii. 127.  
eliding, xiii. 126.  
executors nominate, xiii. 126.  
penalties, xiii. 125-128.  
retentions, xiii. 126.  
superintromission, xiii. 127.  
year and day, xiii. 126.
- VITIUM REALE, xiii. 128.
- VIVISECTION, iv. 14.
- VOLENTI NON FIT INJURIA.* *See* Reparation ; Negligence.
- VOLUNTARY CHURCHES OF SCOTLAND, xiii. 128.
- VOLUNTARY SETTLEMENT—  
claim of damages, iv. 70.
- VOLUNTEERS, xiii. 137. *See* Army.  
accoutrements, xiii. 138.  
discipline, xiii. 139.  
Ireland, xiii. 137.  
Military Lands Act, 19 '3, xiv. 54.  
military law, xiii. 140.  
organisation, xiii. 138.  
penalties (statutory), imposition of, ix. 251.  
pensions, disablement, xiii. 139.  
quitting service, xiii. 138.  
rules and property, xiii. 140, 141.  
yeomanry, xiii. 229.
- VOTE. *See* Ballot ; Election, etc. ; Meeting ; Sequestration ; Joint Stock Companies ; University Election.  
counting of votes, viii. 388.  
tendered votes, ix. 134.
- VOTER—  
abduction of, i. 9.  
blind, xi. 96.  
illiterate, xi. 96.  
registration of, x. 208, 270.
- VOTING BY PROXY, x. 87.  
bondholder no right in, xi. 152.  
persons disqualified from, ix. 135.
- VOUCHER. *See* Discharge.  
bank, iv. 47.  
sequestration proceedings, xi. 174, 186.
- VOYAGE. *See* Marine Insurance ; Charter-Part ; Deviation.  
continuous, iii. 261.
- WADSET, vi. 186 ; xiii. 142.
- WAGER, vi. 107. *See* Gaming and Betting
- WAGES. *See* Hiring ; Master and Servant.  
arrestment of, i. 314 ; vi. 214.  
board, vi. 212.  
Coal Mines Regulations Acts, iii. 68.  
deceased seamen, xii. 126, 127.  
landlord's hypothec, vi. 219.  
lien for, vi. 213.  
married women, viii. 304, 305.  
partnership, dissolution of, ix. 172.  
preference in bankruptcy, ix. 390.  
prescription, xii. 314.  
seamen, xi. 105-107.

WAGES—*continued.*

servant, vi. 211; xii. 133.

Truck Act, xii. 320.

## WAIFS AND STRAYS, xiii. 143.

Burgh Police Act, xiii. 144.

dogs, xiii. 144.

English law, xiii. 143.

expense of keep, xiii. 144.

finder, xiii. 144.

penalties, xiii. 144.

pointing, ix. 298; xiv. 60.

## WAKENING, xiii. 144; i. 71.

and transference, xiii. 146.

consent, xiii. 146.

inhibition, xiii. 145.

intimation of, xiii. 145.

methods of—

minute, xiii. 146.

summons of, xiii. 146.

summons not called, xiii. 146.

year and day, xiii. 145, 146.

## WALES—

backing a warrant, i. 370.

## WALL—

bounding charter, ii. 205. *See Gable.*

## WAR, xiii. 146.

armistice, i. 306.

belligerent rights, xiii. 147.

contraband of, iii. 262; xi. 97; xii. 202.

date of, xiii. 148.

declaration of, xiii. 148.

definition, xiii. 146.

high treason, xiii. 147.

maritime, xiii. 150.

passport, xiii. 275.

prisoners of, x. 32; xiii. 149.

prizes, xiii. 151.

spies, xiii. 149.

surrender, xiii. 149.

truce, xiii. 150.

WARD. *See Curator; Tutor.*

ward-holding, xii. 158.

## WARDING, ACT OF, i. 61.

## WARE, SEA, xi. 102.

## WAREHOUSING, WAREHOUSEMEN,

ix. 281; xiii. 152. *See Pledge.*

responsibility of, vi. 218.

## WARNING—

to remove, xii. 235; xiii. 124.

WARRANDICE, xiii. 153. *See Accretion.*

against consenters not implied, iii. 216.

assignation of debt, i. 337.

WARRANDICE—*continued.*

bonds, ii. 171.

bond and disposition in security, ii. 177.

by beneficiaries, v. 155.

by trustees, xiii. 156.

definition, xiii. 153.

effect of, xiii. 156.

emergence of claim, xiii. 157.

express, xiii. 155.

feu-charter, v. 313, 314.

exambion, xi. 11.

grantor's courses on threat of action,  
xiii. 158.

leases, vii. 337; xiii. 155, 156.

novodamus, charter of, ix. 36.

open charters, ix. 96.

personal, xiii. 153.

absolute, xiii. 154.

from fact and deed, xiii. 154.

simple, xiii. 153.

title, implied undertaking as to, xiii.  
154.

real, xi. 124; xiii. 158.

sale of heritage, xi. 20.

superiorities, ix. 29; xii. 182.

## WARRANT—

border, ii. 196.

dividend, iv. 304.

dock, iv. 314.

assignation of, i. 336.

for a charge, ii. 390.

for citation of defenders, etc., iii. 25.

for citation of witnesses, iii. 30; xiii. 204.

for citation on summary complaint, iii.  
37.

for transmission of process, i. 264.

judge and, ii. 252; vii. 88; xi. 124.

of registration, v. 304, 314; vi. 328-341;

x. 250. *See Registration.*

to arrest *meditatio fugæ*, viii. 399. *See*

Apprehension.

to eject tenant, iv. 384.

to arrest witnesses, xiii. 162.

to enter buildings, xi. 65.

to sell, i. 317.

in criminal cases, xiii. 159.

backing a, i. 369.

citation, xiii. 162.

citation of jurors, xiii. 162.

citation of witnesses, xiii. 162

for liberation, xii. 218.

of commitment, i. 374; xiii. 161.

WARRANT—*continued.*in criminal cases—*continued.*

to arrest, i. 286, 287; iii. 232; xiii. 159.

for breach of interdict, ii. 209.

foreign criminals, xiii. 160.

fugitive offenders, vi. 95–98.

in navy, xiii. 259.

in summary conviction, iii. 286.

to search, iii. 232; xi. 125; xiii. 161.

## WARRANTY—

*actio quanti minoris*, x. 125.

anchors and chain cables, xiv. 4.

bills of exchange, ii. 106.

fire insurance, v. 339–342.

life insurance, viii. 93.

marine insurance, viii. 225, 229.

of shipowner, xi. 135.

sale of goods, x. 326; xi. 29–35.

sale of horse, vi. 231.

to tow, xii. 401.

## WARREN, xiii. 162.

## WASH-HOUSES, ii. 41.

provision and maintenance of, iv. 301.

## WATER, xiii. 163.

pollution of, ix. 39; xiii. 171.

servitude rights, i. 292; xiii. 171. *See also River.*

artificial streams, permanent, xiii. 175.

temporary, xiii. 172–174.

streams distinguished, xiii. 172.

stagnant, xiii. 165.

definition, xiii. 165.

rights and limits of owner, xiii. 166.

rights of inferior heritor, xiii. 167.

surface and drainage, iv. 356; x. 353; xiii. 163.

limits of right, xiii. 164.

natural rights, x. 355; xiii. 164.

property of owner, xiii. 163.

rights of inferior heritors, xiii. 165.

underground, viii. 350; xiii. 167.

definite channel, xiii. 167.

drainage of mines, xiii. 167.

rights, xiii. 168.

percolating: limits of rights, xiii. 169.

percolating: variation of rights by contract, xiii. 170.

percolating: rights between owners, xiii. 170.

percolating: right to pollute and to receive, xiii. 171.

WATER—*continued.*

wells, xiii. 167, 171.

territorial, xiii. 276.

three mile limit, xiii. 278, 279.

## WATERGANG, i. 292.

## WATERWORKS CLAUSES ACT, xiii. 177.

application, xiii. 177.

construction and supply, xiii. 177.

construction, xiii. 177.

accommodation, xiii. 178.

mines and minerals, xiii. 178.

security of reservoirs, xiii. 180.

breaking street and laying pipes, xiii. 180.

water supply, x. 103, 107; xiii. 181.

communication pipes (laid by undertakers), xiii. 182.

fire plugs, xiii. 182.

protection against waste and misuse, xiii. 183.

fouling of water, xiii. 183.

communication pipes (laid by inhabitants), xiii. 183.

## administration—

body, xiii. 183.

accounts, xiii. 184.

payment and recovery of rates, xiii. 184.

profits, xiii. 184.

## Board of Trade, xiii. 185, 186.

provisional orders and procedure, xiii. 185.

liability, xiii. 177–183.

Lands Clauses Act, xiii. 185, 186.

loans, xiii. 186.

meters, xiii. 181.

## WEAK AND FACILE—

interdiction, vii. 30.

wills by, xii. 92, 93.

## WEIGHTS AND MEASURES, xiii. 186.

Board of Trade, xiii. 186, 187.

appeal to Circuit Court, i. 248.

false, vi. 64.

expense of local standards, x. 203.

Licensing Acts, viii. 61.

Scottish, xiii. 188.

standard, xiii. 186.

undallers, xiii. 37.

## WELLS, xiii. 167–171.

public, ii. 41.

repairing and cleaning, i. 293.

servitudes, xiii. 171.

## WET-SPINNING, v. 214.

WHALE, xi. 102; xiii. 188.

  fishing, vi. 7.

  stranded, i. 225.

WHARFINGER, vi. 217.

WHIPPING, x. 31; xiii. 189.

  at common law, xiii. 189.

  by master of apprentice, xiii. 189.

  by father, ix. 111; xiii. 189.

  by shipmaster, xiii. 189.

  by statute, xiii. 189.

    public whipping, xiii. 189.

juvenile offenders, i. 297; iii. 285; vii.

  267; xiii. 189. *See* Youthful Offenders.

WHITEBONNET, x. 117.

WHITE LEAD FACTORIES, v. 214.

WIDOW. *See Jus relictae*; Terce.

  arrestment of annuity, i. 314.

  aliment of, xii. 84.

  election by, vii. 259; xii. 82.

  heir alimentering, i. 199.

  division of Ann, i. 227.

  minister's stipend, i. 226.

  of bastard, ii. 41.

WIDOWS' FUND—

  Advocates in Aberdeen, i. 151.

  Faculty of Advocates, i. 144.

  parish ministers, i. 314; xii. 212.

  schoolmasters, i. 314.

  S.S.C. Society, xi. 370.

  Writers to the Signet, xiii. 227.

WIFE. *See* Husband and Wife; Married Women.

WILD ANIMALS—

  right of property, ix. 88.

WILD BIRDS. *See* Birds, Protection of Wild.

  duck, xiii. 190.

WILL, x. 47; xiii. 190.

  blanks in writs, xiii. 198.

  privileged, xiii. 198.

  cancellations, ii. 284.

  carrying heritage, vii. 370; xii. 68.

  codicil, ii. 284; vii. 372; xiii. 201.

  conditions in, xii. 73.

  definition of, xiii. 190.

  deletions in, iv. 173.

  delivery of, xii. 59; xiii. 199.

  directions relative to, xiii. 199.

  disposition and settlement, xii. 92; xiii. 200.

  drafts and memoranda of, xii. 90; xiii.

  193, 194.

WILL—*continued.*

  erasures, v. 87; xii. 90, 91.

  error in description, xii. 113, 117.

  execution, iv. 143; xii. 88, 89, 90, 93;

  xiii. 195.

  by blind person, xiii. 195.

  by mark, xiii. 195.

  by parish minister, xiii. 196.

  notarial, xii. 88; xiii. 196.

  form of *mortis causa* deeds, xii. 91-94; xiii. 193.

  general words in, xii. 112-117.

  holograph, xii. 88, 89; xiii. 197.

  deletions and alterations, xiii. 198.

  interlineations, etc., xiii. 197.

  signature cancelled, xiii. 198.

  unsigned, xiii. 197.

  homologation of, vi. 225; xiii. 202.

  improbative writing, xiii. 199.

  in favour of charitable trusts, ii. 393.

  in favour of law agent, vii. 323.

  interlineations in, xii. 91.

  interpretation and intention, vii. 372, 373; 374-377, 397-400; ix. 144; xii. 98-101.

  marginal additions, xii. 91.

  mutual, vii. 375; xii. 96, 97; xiii. 202.

  revocation of, x. 343; xii. 122.

  non-encriptive, viii. 334.

  parties capable of executing, xiii. 192.

  ambassador, i. 214.

  member of friendly societies, xii. 93, 94.

  soldier, i. 309.

  parties incapable of executing, xiii. 192.

  insane person, xii. 92.

  intoxicated persons, vii. 49.

  pencil marking, xii. 91.

  power of appointment, xii. 101-101.

  revocation, vii. 385-388; x. 341, 342; xii. 94, 95, 96, 341; xiii. 199; xiv. 74.

*conditio si sine liberis*, iii. 171; xiii. 200.

  stamp duty, xiii. 202.

  testament, xiii. 200.

  trust disposition and settlement, xii. 88; xiii. 201.

  vitiations in, xiii. 198.

  Wills Act, xiii. 203.

WILLS IN ROMAN LAW. *See* Roman Law.

WINDING-UP. *See* Company.

WINTER-HERDING ACT, ix. 273 ; x. 204.  
 tenant, failure to remove, ix. 251.  
 damage by cattle, xii. 204.

WIRE, BARBED, v. 259.

WITHDRAWAL OF CANDIDATE—  
 municipal election, viii. 388.  
 parish council, ix. 123.  
 parliamentary election, ix. 133.  
 School Board elections, xi. 95.  
 of election petition (municipal, etc.), v. 15.  
 of election petition (parliamentary), v. 6.  
 of offer, ix. 90.

WITNESSES, xiii. 204.  
 absconding of, i. 12.  
 abduction of, i. 9.  
 admissibility of, vii. 35 ; xiii. 206.  
 accomplices, xiii. 211.  
 age, i. 162 ; ii. 62 ; xiii. 206.  
 agent, xiii. 212.  
 alien, i. 191.  
 alien enemy, xiii. 212.  
 arbiters as, i. 295, 303 ; xiii. 213.  
 blind persons, ii. 153.  
 bribery as ground for excluding, xiii. 212.  
 co-defender, iii. 78.  
 deaf, dumb, and inarticulate, xiii. 207.  
 answers by writing, xiii. 207.  
 general rule, xiii. 206.  
 intoxicated, vii. 49.  
 judge as, xiii. 213.  
 jurymen, members of Parliament and, peers, as, ix. 242 ; xiii. 213.  
 malice, v. 26 ; xiii. 213.  
 married woman as, viii. 300.  
 mental capacity, vii. 5 ; xiii. 206.  
 mode of stating objections, xiii. 214.  
 officers of Court as, xiii. 213.  
 oversman as, i. 303.  
 party or accused or relations, xiii. 207.  
 religious belief, i. 345 ; xiii. 207.  
 time of stating objections, xiii. 214.  
 unreponed outlaw, xiii. 212.  
 who have heard previous evidence, xiii. 213.  
 attendance and protection, xiii. 162, 204.  
 apprehension of, xiii. 205, 162 ; iii. 392.

WITNESSES—continued.  
 attendance and protection—continued.  
 citation of, i. 287 ; iii. 29 ; v. 138, 140 ; xiii. 205.  
 in England, xiii. 205.  
 in prison, xiii. 206.  
 unable to attend trial, i. 156.  
 Board of Trade investigation, i. 35.  
 caution by, xiii. 205.  
 church Courts, iii. 13.  
 commission to recover documents, iii. 105-114 ; xi. 378-387.  
 contempt of Court by, iii. 252.  
 Crofters' Commission, iii. 401.  
 death of, xiii. 215.  
 eaves droppers, iv. 366.  
 election petition (municipal), v. 17. !!  
 election petition (parliamentary), v. 10.  
 evidence taken on commission, iii. 111.  
 examination of, xiii. 214.  
 competent questions to be answered, xiii. 218.  
 action of divorce, iv. 308.  
 eliminating questions, xiii. 218, 219.  
 confidential communications, iii. 183-186.  
 cross and re-examination, iv. 3 ; xiii. 216-220.  
 deponing from own recollection, xiii. 220.  
 impugning credulity, xiii. 219.  
 interpreter, xiii. 207, 214.  
 interrogatories, vii. 47.  
 mistake in evidence, xiii. 217.  
 must depone *in causa*, xiii. 214.  
 number of witnesses required, xiii. 221.  
 recall of, xiii. 217.  
 relevant and leading questions, xiii. 217.  
 sworn or affirmed, xiii. 207, 215.  
 expenses of, v. 177 ; xiii. 204, 205.  
 prescription, v. 177 ; xii. 315.  
 expert, ix. 98.  
 identification of persons, ix. 99.  
 intimidation of, xiv. 21.  
 interpreter to, xiii. 207, 214.  
 Licensing Acts, viii. 70.  
 naval court-martial, xiii. 262.  
 opinion evidence, ix. 97.  
 of marriage, viii. 267.  
*penuria testium*, ix. 253.

WITNESSES—*continued.*

perjury, ix. 256.  
precognition of, ix. 388.  
scientific, ix. 97.  
small debt proceedings, xi. 355.  
statement of deceased person, ii. 63.  
to execution of deeds, iv. 129–144; vi. 250; vii. 35.

## WOMEN—

as arbiters, i. 294.  
as guardians, xiii. 6.  
as judicial factors, vii. 176.  
as medical practitioners, xiii. 251.  
as tutors, xiii. 4, 6.  
cannot practice as law agents, xiv. 46.  
employed in coal mines, iii. 67.  
employment of, in factories, v. 221–227.  
franchise, vi. 51, 54.  
intestate succession, heritage, xii. 48.  
municipal elections, ii. 262.  
parliamentary representatives, xiii. 45.  
protection during war, xiii. 149. *See*  
Universities.

## WOODCOCK, viii. 48; xiii. 221.

## WOOD FOREST, vi. 35.

timber, xii. 259.

## WOODS AND FORESTS, COMMISSIONERS OF, iv. 10.

## WORKING CLASSES, HOUSING OF, vi. 235.

lodging-houses, vi. 239.

## WORKING MEN'S CLUBS, vi. 74; xiv. 18.

## WORKMAN—

desertion of service, iv. 210.  
Employers and Workmen Act, 1875, xi. 359.

Employers' Liability Act, v. 32.

hiring, vi. 203.

intimidation of, i. 328; iii. 228.

master and servant, viii. 307.

tools of, ii. 55.

Truck Act, xii. 320.

## WORKMEN'S COMPENSATION ACT,

1897, xi. 368; xiii. 222; xiv. 7–98.

accident, xiii. 222; xiv. 98.

amount of compensation, xiii. 223.

employer, xiii. 222; xiv. 99.

employments, xiii. 222; xiv. 99.

indemnity claimable from third party, xiii. 223.

liability of undertakers for sub-contractor, xiii. 223.

WORKMEN'S COMPENSATION ACT—*continued.*

procedure, xiii. 224; xiv. 99.  
seamen, xi. 103.  
workman, xiii. 223.  
appeal to House of Lords incompetent, xiv. 7.

## WORKSHOP, v. 212.

## WOUNDING, i. 328; viii. 188.

## WRECK, vi. 32; xi. 102; xiii. 224.

Board of Trade, xiii. 225, 226.

Commissioners, xiii. 225, 226.

Crown property, xiii. 225.

notice to receiver, xiii. 225.

penalties, xiii. 225.

receiver of, xi. 85; xiii. 224, 225.

WRIT. *See* Brieve; *Clare constat*; Confirmation; Extent; Resignation.

of acknowledgment, xii. 155.

Stamp Acts, xi. 465.

of investiture, xii. 157.

parliamentary elections, ix. 131, 137.

WRITS. *See* Deeds, Execution of; Delivery; Will; Registration.

assignation of, i. 339; ii. 176; v. 308.

quasi-judicial, iv. 144.

blanks in, xiii. 198.

*in re mercatoria*, iv. 144; vii. 2.

## WRITERS TO THE SIGNET, xiii. 226.

apprentices, xiii. 227.

assignation of indentures, xiii. 228.

fees, xiii. 228.

commissioners, xi. 91.

indentures, xiii. 227.

intrants, xiii. 228.

discharge of indenture, xiii. 228.

examination, xiii. 228.

fees, xiii. 228.

Keeper of the Signet, xiii. 227.

Keeper of the Signet, substitute, xiii. 227.

library, xiii. 227.

marriage of members, xiii. 227.

meetings, xiii. 227.

office bearers, xiii. 226, 227.

widows' fund, xiii. 227.

WRONGFUL IMPRISONMENT. *See* *Habeas corpus*; Imprisonment; Reparation.

## YEAR AND DAY—

ancestor's debts, i. 222.

arbitration, i. 298.

**YEAR AND DAY—*continued.***

- decreet in absence, i. 15.  
sleeping process, xiii. 145, 146.  
vicious intromission, xiii. 112.  
summons not called, xiii. 146.  
tutor-at-law, xiii. 25.  
tutors dative, xiii. 23.
- YEOMANRY**, xiii. 228. *See Army.*
- YOUTHFUL OFFENDERS—**

- liability of parent or guardian, xiv.  
100.

**YOUTHFUL OFFENDERS—*continued.***

- power to discharge without punishment,  
xiv. 100.  
register of convictions, xiv. 100.  
remand or committal to placet other than  
prison, xiv. 101.  
removal of disqualifications attaching to  
theft, xiv. 100.  
*See Whipping.*

**ZAIRE.** *See* Cruives and Zaires.

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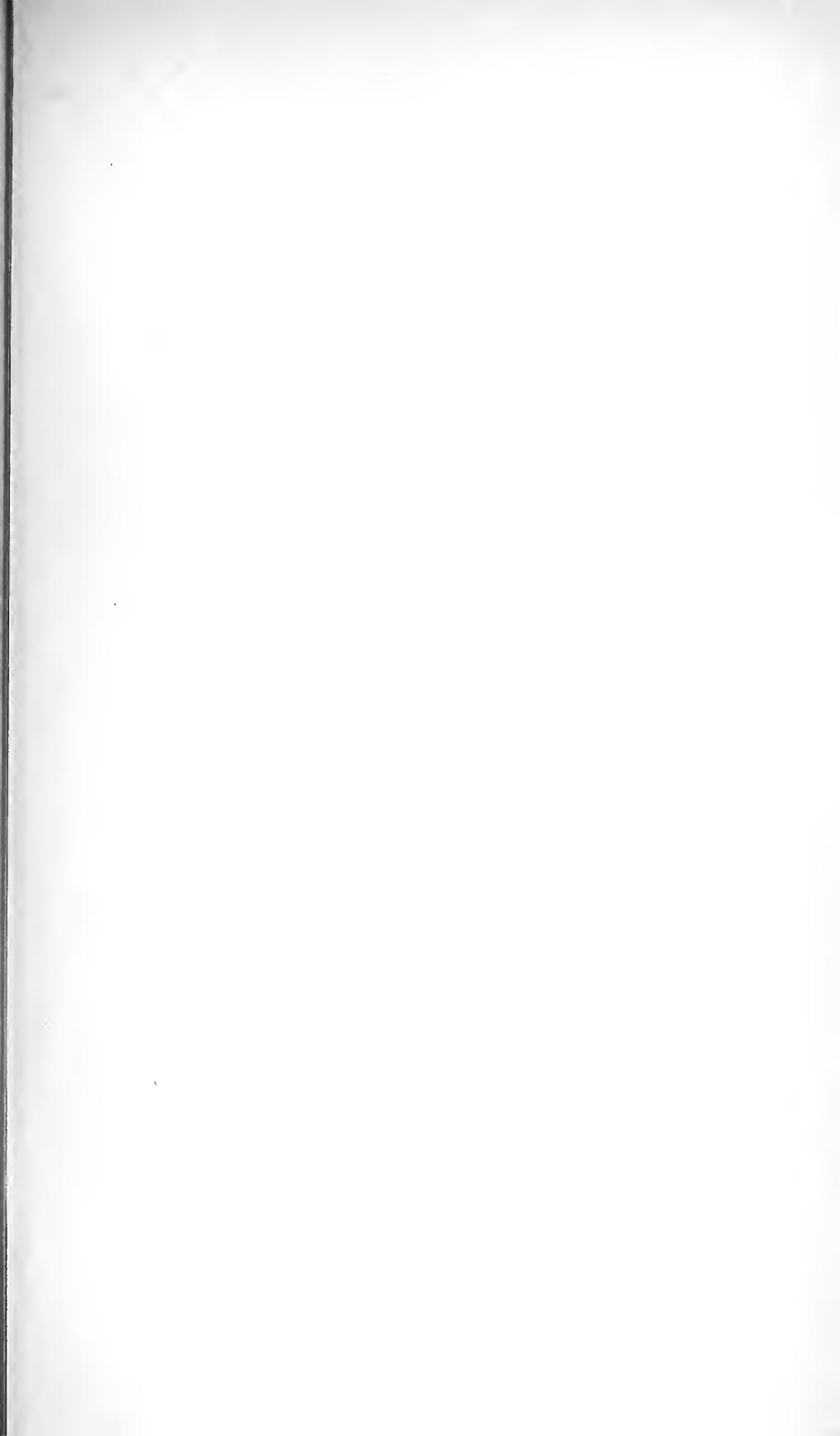
























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